Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
Part 1: UTEX SPONSORED ISSUES					
Right to use Interconnection to provide service to Wholesale Customers that provide or support New Technology based services and applications					
UTEX 1	Can UTEX interconnect with AT&T under §§ 201, 251 and 252 and obtain a § 252 ICA that addresses UTEX's services to Wholesale Customers that provide or support New Technology based services and applications?)	GTC: Whereas clauses 3-6; all references to applicability; 1.1.1; 1.3; 46.1; 47.1; 51 (definitions); 54.1 Attachment NIM and all appendices Attachment Collocation of Fiber-based RSMs and Ethernet (entirety); AT&T Proposed Definitions of (51.1.40 "End User", 51.1.41 "Internet Service Provider", 51.1.64 "Internet Service Provider", 51.1.61 "IXC); Attachment Collocation; Attachment Virtual Collocation; Resale, Attachment UNE, Attachment xDSL; Attachment LNP; Attachment Numbering; All NIM Attachments and Appendices; Attachment ITR;	References to "New Technology" appeared in UTEX's 2005 proposals and DPLs, so AT&T's contention about relevance is incorrect.. For example, the phrase "new technology" appears in UTEX's 2005 Appendix 2 to NIM SS7 SPOI (the Handbook) in § 13(a)(i). In any event, "New Technology" is a descriptive term for applications, services and devices that employ recent technological advances that began to appear in the 1990s and particularly after 1996. Examples are the various ways to provide VoIP such as SIP, MegaCo and H.323. Given that UTEX was ordered to return to its 2005 contract proposals in Order 30, for purposes of this case a "New Technology provider" will usually be an enhanced and/or information service provider under UTEX's contract terms. UTEX is an LEC that provides only Telephone Exchange Service or, in the alternative, Exchange Access Service. UTEX is a requesting carrier and is entitled to seek and obtain interconnection with AT&T for the purpose of exchanging Telecommunications Traffic. Both the FCC and the PUC have confirmed that UTEX has a right to interconnect with AT&T as an LEC and to use that interconnection to support service to wholesale customers and particularly non-carrier customers. As discussed below, when UTEX interconnects and exchanges traffic with AT&T UTEX cannot be forced to become an access customer of AT&T; all of the traffic involved here is § 251(b)(5) traffic, although a large part also falls within § 201 because of its jurisdictionally interstate	AT&T believes that this issue is no longer relevant as a result of the rulings in Order 30. Wholesale Customers that provide or support New Technology based services and applications were defined terms in the contract language ordered removed by Order 30. These terms are not defined in the remaining contract language. UTEX, as a CLEC, can interconnect with AT&T consistent with the Federal Telecommunications Act (FTA). AT&T has proposed terms that are consistent with the FTA. Interexchange traffic, regardless of transport protocol (e.g. TDM, VoIP) is governed by AT&T's switched access tariffs, and any carrier that sends such traffic to AT&T has established itself as an AT&T switched access customer. Resolution of this issue does not assist in determining appropriate contract language and the determination of the contract language is more properly addressed in AT&T Issues under: NIM, NIM-1, NIM-2.	*The Arbitrators conclude that UTEX may obtain an ICA allowing it to interconnect with AT&T Texas for the transmission and routing of telephone exchange service and exchange access consistent with the FTA. AT&T Texas does not dispute this conclusion. The Arbitrators address the specific terms of the ICA in connection with other DPL issues.*

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		any other as-yet unidentified provisions dealing with signaling, routing, rating and records, recording and billing.	character. Even if – or to the extent – any of this is Exchange Access traffic because it involves a provider that offers Telephone Toll service, or is somehow subject to the exchange access regime under § 251(g) or the FCC's access charge rules then that means UTEX and AT&T are engaged in jointly provided access and each will be responsible for separately and individually billing the access customer. AT&T cannot lawfully send an access bill to UTEX, if that is what AT&T is trying to do. AT&T's proposed language is quite unclear and it has completely failed and refused to explain its intended results from an operational and financial perspective when it comes to the primary traffic types that will be handled as between the parties. UTEX cannot fully determine just what it is that AT&T has in mind, and AT&T is not talking. To the extent, however, AT&T is proposing to require UTEX or any of its non-carrier customers to be involuntarily subjected to any kind of Exchange Access charge regime when neither UTEX nor its non-carrier customers provide Telephone Toll service, then those proposals violate §§ 157, 201, 202, 203, 230, 251 and/or 252 and the FCC's rules and decisions relating to non-carrier customer traffic and intercarrier compensation as well as recent precedent. They are therefore not carriers and cannot be treated as such for purposes of interconnection, traffic exchange, resale, UNEs or Collocation. Section 251(b)(5) covers *all* Telecommunications exchanged between two LECs. The *Worldcom* decision makes that clear. Section 251(g) temporarily carves out all traffic		

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			that was subject to access charges in 1996. As the *Worldcom* court notes, there were not CLECs prior to the Act, so there was no traffic between ILECs and CLECs. Hence all traffic between an ILEC and a CLEC is within § 251(b)(5), particularly given the FCC's recent *Core Mandamus Order* that brought Internet-related traffic within § 251(b)(5). When an ILEC and CLEC are jointly providing a Telephone Toll Service then the § 251(g) carve out applies. But that is jointly provided access, and under prevailing rules the ILEC and CLEC each send the bill to the Telephone Toll provider and do not bill each other. The Act simply does not allow AT&T to treat another LEC that is providing an LEC function (Telephone Exchange Service and/or Exchange Access Service) as an "access customer." UTEX does not provide Telephone Toll Service and is not an IXC. FCC Rule 69.5 directly prohibits assessment of access charges on any entity that is not providing Telephone Toll. AT&T's tariff also cannot be read to apply to UTEX, and any interpretation that would allow such a reading would violate §§ 201, 203, 203, 251 and 252. ISP-bound traffic is "interexchange" under AT&T's proposed definition. But it is not subject to access. Under AT&T's theory UTEX should be able to impose access charges on AT&T if an AT&T end user makes a call to an ESP served by UTEX. The FCC tried to "carve" one kind of LEC-LEC traffic out of § 251(b)(5) by invoking § 251(g). The DC Circuit reversed in *Worldcom*. AT&T is trying to convince the PUC to commit the same error.		

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UTEX 2	Are UTEX's services to Wholesale Customers that provide or support New Technology based services and applications either "Telephone Exchange Service" or "Exchange Access Service?"	See contract references for Issue 1	See UTEX's position statement above. UTEX asserts that it is providing Telephone Exchange Service. But if that is not correct, then the only other alternative is Exchange Access Service. There is and can be no third category of LEC to LEC services under the Act.	AT&T believes that this issue is no longer relevant as a result of the rulings in Order 30. Wholesale Customers that provide or support New Technology based services and applications were defined terms that are not contained in the contract language subsequent to Order 30. In order to be entitled to § 251 interconnection, UTEX must provide either Telephone Exchange Service or Exchange Access Service. It is not clear what new technology traffic actually is; nor is it clear whether it meets the definition of "Telephone Exchange Access" or "Exchange Access" service as per § 251 (c)(2).	*The Arbitrators conclude that UTEX may obtain an ICA allowing it to interconnect with AT&T Texas for the transmission and routing of telephone exchange service and exchange access consistent with the FTA. AT&T Texas does not dispute this conclusion. LECs may also serve as interexchange carriers and exchange interexchange toll traffic with other LECs. Furthermore, the issue of whether service provided by UTEX to its Enhanced Service Provider (ESP) customers is telephone exchange service or exchange access service is addressed in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers." The Arbitrators address the specific terms of the ICA in connection with other DPL issues.*
UTEX 3	Are UTEX's services to Wholesale Customers that provide or support New Technology based services and applications "Telephone Exchange Service" under § 153(47)(A) because they are a "service within a telephone exchange, or within a connected system	See contract references for Issue 1	UTEX's services do meet the definition in § 153(47)(A). If they do not then they meet the definition in § 153(47)(B).	See answer to Issue 2.	*The issue of whether service provided by UTEX to its ESP customers is telephone exchange service or exchange access service is addressed in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers." The Arbitrators address the specific terms of the ICA in connection with other DPL issues.*

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Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
	of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge?"				
UTEX 4	Are UTEX's services to Wholesale Customers that provide or support New Technology based services and applications "Telephone Exchange Service" under § 153(47)(B) because they are a "comparable service provided through a system of switches, transmission	See contract references for Issue 1	UTEX services do meet the definition in § 153(47)(A). If they do not then they meet the definition in § 153(47)(B).	See answer to Issue 2.	*The issue of whether service provided by UTEX to its ESP customers is telephone exchange service or exchange access service is addressed in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers." The Arbitrators address the specific terms of the ICA in connection with other DPL issues.*

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	equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service?"				
UTEX 5	Are UTEX's services to Wholesale Customers that provide or support New Technology based services and applications "Exchange Access Service under § 153(16) because they constitute "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services?"	See contract references for Issue 1	As noted above, UTEX contends that its services are Telephone Exchange Service. But if that is not correct, then the only other alternative is Exchange Access Service. There is no third category of LEC services under the Act. This was conceded by the FCC and was held to be the case in the DC Circuit's decision in *Bell Atlantic Telephone Companies v. FCC*, 206 F.3d 1 4-5, 8-9 (D.C. Cir. 2000).	See answer to Issue 2.	*The issue of whether service provided by UTEX to its ESP customers is telephone exchange service or exchange access service is addressed in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers." The Arbitrators address the specific terms of the ICA in connection with other DPL issues.*
UTEX 6	Are there any restrictions on the kind of service UTEX can	See contract references for Issue 1	UTEX asserts there cannot be any restrictions on the services UTEX provides. Any such restrictions would be anticompetitive, a barrier to entry and violate §§ 157, 201, 202, 203, 230,	See answer to Issue 2. Additionally, AT&T has provided the appropriate contract language for the services that AT&T should provide under Section 251.	*The issue of whether service provided by UTEX to its ESP customers is telephone exchange service or exchange access service is addressed in the text of the Award in the section titled*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
	provide to Wholesale Customers that provide or support New Technology based services and applications or the means by which UTEX provides these services?		251 and/or 252 and the FCC's rules and decisions relating to non-carrier customer traffic and intercarrier compensation. No regulatory advantage should be given to POTS technology to favor an ILEC business model. If this is access then it is jointly provided access. The rules and cited decisions (as well as MECAB, which both AT&T and UTEX advocate) do not allow one LEC to force another joint provider LEC to be responsible to the other LEC for the other LEC's access entitlement. Unless there is voluntary consent and an express agreement, each LEC issues its own bill for its portion of access to the access customer		*"Intercarrier Compensation for Traffic Involving UTEX's ESP Customers." The Arbitrators address the specific terms of the ICA in connection with other DPL issues.*
UTEX 7	Under the Act and current FCC rules are any of UTEX's current or potential Wholesale Customers that provide or support New Technology based services Telecommunications Carriers who provide Telecommunications Services generally and Telephone Toll service specifically?	See contract references for Issue 1	The evidence will show that with the exception of any CMRS carrier or LEC that chooses to indirectly interconnect with AT&T by advertising routing through UTEX's network (in which case UTEX would be providing a transit function) all of its other Wholesale Customers are not Telecommunications Carriers, do not provide any Telecommunications Service and do not provide Telephone Toll Service. AT&T is attempting to gain an unlawful regulatory advantage by requiring traditional toll like payments for traffic that does not owe such toll charges under law. If this is access then it is jointly provided access. The rules and cited decisions (as well as MECAB, which both AT&T and UTEX advocate) do not allow one LEC to force another joint provider LEC to be responsible to the other LEC for the other LEC's access entitlement. Unless there is voluntary consent and an express agreement, each LEC issues its own bill for its portion of access to the access customer	See answer to Issue 2. Additionally, AT&T lacks sufficient information to characterize UTEX's current or potential customers in one manner or another.	*The issue of whether UTEX's ESP customers are telecommunications carriers is addressed in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers." The Arbitrators address the specific terms of the ICA in connection with other DPL issues.* *To the extent that this issue is not addressed in those sections of the Award, the Arbitrators have concluded that resolution of the issue is not necessary to determine the appropriate ICA language for intercarrier compensation.*

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UTEX 8	Under the Act and current FCC rules if a UTEX current or potential Wholesale Customer that provides or supports New Technology based services is not a Telecommunications Carrier that provides Telecommunications Services generally and Telephone Toll service specifically, and if the Wholesale Customer asserts its right to the "ESP Exemption" can its traffic nonetheless be subjected to Exchange Access charges on a mandatory basis?	See contract references for Issue 1	No, it cannot. Under the Act, only Telephone Toll Service is subject to Exchange Access. Under FCC Rule 69.5(b) access charges apply only to "interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services." All other customers are "End Users" that do not pay access charges and instead pay "End User charges" See FCC Rule 69.5(a). This was what the rules provided at the time the Act was passed, and this Commission cannot expand the class of mandatory access customers as a matter of law. Even the FCC cannot lawfully expand the class; l§ 251(g) allows the FCC to move access out of the carve out and into § 251(b)(5), but it cannot place new or different categories into the mandatory access regime. If this is access then it is jointly provided access. The rules and cited decisions (as well as MECAB, which both AT&T and UTEX advocate) do not allow one LEC to force another joint provider LEC to be responsible to the other LEC for the other LEC's access entitlement. Unless there is voluntary consent and an express agreement, each LEC issues its own bill for its portion of access to the access customer. Two separate federal district courts have squarely held that one LEC cannot require another LEC to pay exchange access charges for termination of IP-originated traffic and that the required intercarrier compensation regime is § 251(b)(5).	See answers to Issues 2 and 7. Subject to those answers, AT&T states that it follows industry standard practices to jurisdictionalize traffic and determine whether access charges apply. UTEX is responsible for all applicable access charges due and payable to AT&T for termination of access traffic delivered to AT&T by UTEX.	*The issue of applicability of the ESP exemption to UTEX's ESP customers is addressed in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers." The Arbitrators address the specific terms of the ICA in connection with other DPL issues.*
UTEX 9	If, under the Act and current FCC rules a UTEX current or	See contract references for Issue 1	If UTEX is incorrect that this traffic cannot be subjected to the access regime, then UTEX contends that UTEX cannot be declared or required to be AT&Ts "access customer and	See answers to Issues 2 and 7. Additionally, UTEX is responsible for all applicable access charges due and payable to AT&T for termination of access traffic delivered to AT&T	*This issue is addressed in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers." The Arbitrators address the specific terms of the*

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	potential Wholesale Customer that provides or supports New Technology based services is not a Telecommunications Carrier that provides Telecommunications Services generally and Telephone Toll service specifically, and if a Wholesale Customer's traffic can be subjected to Exchange Access charges on a mandatory basis even if the Wholesale Customer has invoked the "ESP Exemption" is UTEX or the Wholesale Customer the party that is responsible for any AT&T access entitlement?		liable for payment of any AT&T access entitlement. UTEX would be a joint access provider, and under the FCC's rules each of AT&T and UTEX would separately and directly send the access bill to the access customer. Both parties seem to agree that MECAD applies (MECAD DIAGRAMS ARE A SUBSET OF UTEX CALL FLOW DIAGRAMS) but the outcome of how MECAD applies are completely different. UTEX insists that when two LECS engage in the joint provision of access under industry guidelines, neither LEC is deemed to be the access customer of the other. Thus AT&T wants new to create a new and unlawful result through their planned implementation. If this is access then it is jointly provided access. The rules and cited decisions (as well as MECAB, which both AT&T and UTEX advocate) do not allow one LEC to force another joint provider LEC to be responsible to the other LEC for the other LEC's access entitlement. Unless there is voluntary consent and an express agreement, each LEC issues its own bill for its portion of access to the access customer	by UTEX.	*ICA in connection with other DPL issues.*
UTEX 10	If, under the Act and current FCC	See contract references for Issue	See position statement for Issue 9.	No. See answers to Issues 2, 7 and 9.	*This issue is addressed in the text of the Award in the section titled "Intercarrier Compensation*

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	rules a UTEX current or potential Wholesale Customer that provides or supports New Technology based services is not a Telecommunications Carrier that provides Telecommunications Services generally and Telephone Toll service specifically, and if a Wholesale Customer's traffic can be subjected to Exchange Access charges on a mandatory basis even if the Wholesale Customer has invoked the "ESP Exemption" does that mean that UTEX is a joint access provider with AT&T and traditional MECAB processes and	1			*for Traffic Involving UTEX's ESP Customers." The Arbitrators address the specific terms of the ICA in connection with other DPL issues.*

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	rules apply with the result that UTEX and AT&T each separately bill the Wholesale Customer for each LEC's share of the access service they provide?				
UTEX 11	If, under the Act and current FCC rules a UTEX current or potential Wholesale Customer that provides or supports New Technology based services is not a Telecommunications Carrier that provides Telecommunications Services generally and Telephone Toll service specifically, and if a Wholesale Customer's traffic can be subjected to Exchange Access charges	See contract references for Issue 1	If, as explained above, UTEX's service is Telephone Exchange Service, then § 251(b)(5) applies and AT&T cannot recover access prices from UTEX because that would violate § 252(d). If this is Exchange Access, then it is jointly provided access and AT&T cannot send the bill to UTEX because both parties have agreed to use Meet Point Billing and the Multiple Bill Single Tariff option. AT&T appears to be trying to create some new set of ill-defined rules and practices for a discrete kind of traffic that it essentially claims is not either Telephone Exchange or Exchange Access, but is instead something not found in the Act or FCC rules. This is not allowed under *Bell Atlantic*. Further, AT&T's approach has not "industry standard" basis or authority. AT&T cannot credibly argue this is traditional POTS and should be treated as such and then turn around and say it should be treated differently. This is unlawful and discriminatory. If AT&T is allowed to send an access bill to UTEX for any kind of call where UTEX is not providing Telephone Toll, then it is imperative that each and every circumstance where this will	Yes. See answers to Issues 2, 7 and 9.	*This issue is addressed in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers." The Arbitrators address the specific terms of the ICA in connection with other DPL issues.*

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	on a mandatory basis even if the Wholesale Customer has invoked the "ESP Exemption" and if UTEX is not a joint access provider with AT&T can AT&T lawfully recover its access entitlement from UTEX even though UTEX is acting solely as an LEC?		happen be clearly spelled out, and all of the things related to signaling, routing, rating and bill processing will be fully disclosed and known. For this reason detailed call flow diagrams – edited as necessary to perform this function are absolutely required. AT&T's terms are wholly unclear. UTEX has the unqualified right to know when it will be charged, what activities or call types will generate a charge, what information is used to determine whether a charge is appropriate, and how much the charge will be.		
UTEX 12	Are there any restrictions on the kinds of service UTEX's Wholesale Customers that provide or support New Technology based services and applications can provide to their customers insofar as they use UTEX's services as an input to their service output?	Entire AT&T Agreement, and see also contract references for Issue 1	Any restrictions or obligations on Wholesale New Technology providers that are not carriers would violate §§ 157, 201, 202, 203, 230, 251 and/or 252 and the FCC's rules and decisions relating to non-carrier customer traffic and intercarrier compensation. AT&T may not utilize latent arguments in language that they propose for one purpose to gain a regulatory advantage for another purpose.	See answer to Issue 2.	*This issue is addressed in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers" and the section titled "End User Definition." The Arbitrators address the specific terms of the ICA in connection with other DPL issues.* *To the extent that this issue is not addressed in those sections of the Award, the Arbitrators have concluded that resolution of the issue is not necessary to determine the appropriate ICA language for intercarrier compensation.*
UTEX	Is the proper	See contract	The inquiry is properly on the services in	See answer to Issue 2. Further, assuming UTEX	*This issue is addressed in the text of the Award*

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13	analysis of the regulatory classification relating to Wholesale Customers' New Technology based services and applications based on a review of their services in general or is the focus of their traffic on a call by call basis??	references for Issue 1	general, because the applicable definitions and the resulting regulatory classification are based on the offer and the capability and characteristics of the service. Besides, one cannot discern anything about this kind of traffic by looking at either the signaling or bearer content. This is an entity and service based inquiry, not one that looks at individual calls.	is referring to the jurisdictionalization of traffic, both forms of review may be appropriate. Notably, however, it is not entirely clear what UTEX may mean by its use of the term "review."	*in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers." The Arbitrators address the specific terms of the ICA in connection with other DPL issues.*
UTEX 14	If the proper analysis of the regulatory classification relating to Wholesale Customers' New Technology based services and applications is based on a review of their services in general how is this review to be conducted, what information is used, are the Wholesale Customers necessary parties to any individual	See contract references for Issue 1	The information that should be used is that which is necessary to apply the facts to the definitions set out in Act and FCC rules for the relevant services, e.g., Telecommunications, Telecommunications Service, Telephone Toll Service, Information Service and Enhanced Service. UTEX believes the Wholesale Customers are necessary parties if their rights, duties and obligations are going to be determined. UTEX should be able o reasonably rely on customer certifications, because that is how the LEC industry has always handled this matter. UTEX, however, can testify from personal knowledge regarding most if not all of its customers. Nonetheless, UTEX should not have any specific obligation to continually and personally monitor and police the activities and services of its Wholesale Customers	See answer to Issue 2. Further, and to the extent AT&T understands the issue presented, UTEX has the responsibility to properly and accurately represent the traffic it delivers to AT&T.	*This issue is addressed in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers." The Arbitrators address the specific terms of the ICA in connection with other DPL issues.*

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	determination, can UTEX rely on Wholesale Customer representations or must UTEX individually and personally investigate potential Wholesale Customers? Is UTEX under any specific obligation to continually and personally monitor and police the activities and services of its Wholesale Customers?				
UTEX 15	If the review is based on call-by-call analysis, is this review conducted using call signaling information, call bearer information (content) or information from other sources?	See contract references for Issue 1	UTEX does not believe any review can or should be based on a call-by-call analysis. UTEX does not know AT&T's position on this topic and reserves the right to respond to AT&T's position if it ever gets around to expressing one. Before you can start "billing" and using "industry billing standards" you have to classify the calls. AT&T has it backwards. The law prescribes how calls are to be classified, not billing standards. Any application of billing practices that result in a misclassification under law results in an illegal and unenforceable bill.	See answer to Issue 2. It is not entirely clear what UTEX may mean by its use of the term "review". To the extent call-by-call analysis is applied for Intercarrier Compensation purposes, this should adhere to industry billing standards.	*This issue is addressed in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers." The Arbitrators address the specific terms of the ICA in connection with other DPL issues. The exchange of Calling Party Number (CPN) information is addressed under DPL Issue AT&T NIM 6-5.*

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UTEX 16	If the review is based on call-by-call analysis using call signaling information, what signaling information is to be used and how is it to be generated, exchanged and observed?	See contract references for Issue 1	UTEX does not believe any review can or should be based on a call-by-call analysis. UTEX does not know AT&T's position on this topic and reserves the right to respond to AT&T's position if it ever gets around to expressing one.	See answer to Issue 2. It is not entirely clear what UTEX may mean by its use of the term "review". To the extent call-by-call analysis is applied for Intercarrier Compensation, it should adhere to industry billing standards. Signaling information is to be "generated, exchanged and observed" in accordance with the terms and conditions AT&T has proposed in AT&T's proposal in NIM6: Compensation.	*This issue is addressed in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers." The Arbitrators address the specific terms of the ICA in connection with other DPL issues. The exchange of Calling Party Number (CPN) information is addressed under DPL Issue AT&T NIM 6-5.*
UTEX 17	If the review is based on call-by-call analysis using call bearer information what "content" must be captured, and how is it to be stored, exchanged and observed without violating the concept of common carriage and statutory and common-law user privacy rights?	See contract references for Issue 1	UTEX does not believe any review can or should be based on a call-by-call analysis. UTEX does not know AT&T's position on this topic and reserves the right to respond to AT&T's position if it ever gets around to expressing one. If AT&T wants to wiretap UTEX's customers UTEX wants no part of that because it would violate the concept of common carriage (which applies to both UTEX and AT&T) and statutory and common-law user privacy rights. The traffic in issue is jurisdictionally interstate for the most part, because it involves the Internet. Any attempt to apply intrastate tariffs and rates to interstate traffic violates §§ 201, 202 and 203. If access applies, then the interstate tariffs and rates apply, including the sections addressing jointly provided access and recourse to PIUs, which both UTEX and AT&T have.	See answer to Issue 16. AT&T follows, and proposes language for, normal industry practice for appropriate billing for calls. This issue is properly addressed by AT&T's proposed contract language in AT&T's proposal in NIM6: Compensation, which states that for all traffic, including, without limitation, Switched Access Traffic and wireless traffic, each Party must provide Calling Party Number ("CPN") as defined in 47 C.F.R. § 64.1600(c) ("CPN"). If the percentage of calls passed with CPN is less than 90%, all calls delivered by one Party to the other without CPN will be billed as Intrastate IntraLATA Toll Traffic.	*This issue is addressed in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers." The Arbitrators address the specific terms of the ICA in connection with other DPL issues. The exchange of Calling Party Number (CPN) information is addressed under DPL Issue AT&T NIM 6-5.*
UTEX 18	If the review is based on call-by-call analysis using information from other sources	See contract references for Issue 1, but see principally the parties' respective	UTEX does not believe any review can or should be based on a call-by-call analysis. UTEX does not know AT&T's position on this topic and reserves the right to respond to AT&T's position if it ever gets around to	See answer to Issue 16. This question is properly addressed by AT&T's proposed contract language in NIM6: Compensation which states that if the percentage of calls passed with CPN is less than 90%, all calls delivered by	*This issue is addressed in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers." The Arbitrators address the specific terms of the ICA in connection with other DPL issues. The*

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	what other information sources are to be used and what are the Parties' relative responsibilities to obtain, store and exchange this information?	interconnection and compensation attachments and appendices	expressing one.	one Party to the other without CPN will be billed as Intrastate IntraLATA Toll Traffic.	*exchange of Calling Party Number (CPN) information is addressed under DPL Issue AT&T NIM 6-5.*
UTEX 19	Is it appropriate to have different terms and conditions for Legacy (POTS) and New Technology traffic in order to properly deal with each?	See contract references for Issue 18	Yes. There should be different terms and conditions for Legacy (POTS) traffic because any attempt to force "square peg" New Technology users into "round hole" POTS business models and methods would constitute unlawful discrimination, be anticompetitive and would violate §§ 157, 201, 202, 203, 230, 251 and/or 252 and the FCC's rules and decisions relating to non-carrier customer traffic and intercarrier compensation. UTEX suggests that separate trunks should be employed so the differences in treatment can be easily implemented; that way the only dispute will be whether a party or a party's customer is misrouting, which UTEX tried to address with specific language that has now been stricken. AT&T's position is inconsistent. First, it says this is all "POTS" or should be treated like POTS and legacy rules and practices should apply, but in reality AT&T is proposing separate treatment that it will not explain and its language is wholly vague, ambiguous and unclear.	See answer to Issue 2. Further, AT&T disagrees that traffic exchanged between UTEX and AT&T can or should be defined as New Technology traffic. AT&T's proposed contract language is technology neutral.	*The Arbitrators note that the ICA is adopted pursuant to FTA §§ 251 and 252, which are technology neutral and do not distinguish between "Legacy POTS" and "New Technology" traffic. The specific terms of the ICA including the interconnection and intercarrier compensation applicable to various types of traffic exchanged between the parties are addressed in connection with other DPL issues.*
UTEX 20	Would it be unjust or unreasonable under § 201;	See contract references for Issue 18	Yes. Any such attempt would violate §§ 157, 201, 202, 203, 230, 251 and/or 252 and the FCC's rules and decisions relating to non-carrier customer traffic and intercarrier compensation.	No. See answer to Issue 19. In addition, UTEX is responsible for all applicable access charges due and payable to AT&T for termination of access traffic delivered to AT&T by UTEX.	*The Arbitrators have addressed intercarrier compensation in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers"*

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	unreasonably discriminatory or the creation of an unlawful preference under § 202; or, a violation of § 203 to apply access charges to New Technology Traffic – either directly on New Technology providers or indirectly by imposing them on UTEX?				*and in response to DPL Issues AT&T NIM 6-1 through 6-16. For the reasons stated therein, the intercarrier compensation provisions approved by the Arbitrators are consistent with FTA §§ 251 and 252 and FCC rules regarding reciprocal compensation and access charges. As such, the provisions (1) do not provide for unjust or unreasonable charges, practices, classifications, or regulations under FTA § 201; (2) do not provide for unjust or unreasonable discrimination or give any undue or unreasonable preference or advantage in violation of FTA § 202; and (3) do not cause a violation of the tariff requirements of FTA § 203.*
UTEX 21	Would it be discriminatory and therefore unlawful under § 251(c)(2)(D) or § 252(d)(1)(A)(ii) to require UTEX to pay access charges for New Technology Traffic?	See contract references for Issue 18	Yes. Any such attempt would violate §§ 157, 201, 202, 203, 230, 251 and/or 252 and the FCC's rules and decisions relating to non-carrier customer traffic and intercarrier compensation.	No. See answer to Issues 19 and 20	*This issue is addressed in response to DPL issue UTEX 20.*
Form and Method of Physical Interconnection for Legacy (POTS) and New Technology traffic					
UTEX 22	Is it lawful under existing rules to require UTEX to use Physical Interconnection Forms and Methods	See contract references for Issue 18	No it would not be lawful. Any such attempt would violate §§ 157, 201, 202, 203, 230, 251 and/or 252 and the FCC's rules and decisions relating to non-carrier customer traffic and intercarrier compensation.	See answers to Issues 2 and 19. Subject to those answers, AT&T agrees that it is lawful to require UTEX to interconnect in accordance with Section 251.	*The type of traffic is not necessarily the determinant of the interconnection method used in the exchange of traffic. If a desired interconnection method is technically feasible, the ILEC is required to allow interconnection using that method. The specific terms of the ICA relating to interconnection methods are*

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	developed to address Legacy (POTS) traffic when the Interconnection will be used to facilitate exchange of New Technology Traffic?				*addressed in connection with other DPL issues. For the reasons stated therein, the terms approved by the Arbitrators are consistent with FTA §§ 251 and 252 and relevant existing FCC rules regarding interconnection.*
UTEX 23	Is SS7 and circuit switched technology the "most efficient telecommunications technology currently available and the lowest cost network configuration?" (*See*, FCC Rule 51.505(b)(1))	See contract references for Issue 18	No, SS7 is not the most efficient telecommunications technology or the lowest cost network configuration. Where AT&T has the capability and equipment that will support newer ways of interconnecting, then it must interconnect with UTEX using that capability and equipment. When SS7 "protocol" is used UTEX must be treated as an "equal" or "peer" under the Act. When it comes to interconnection UTEX is not AT&T's "customer." Interconnection is not a service; it is a duty. If there is any element of interconnection where UTEX is not allowed to be an equal or peer and instead can be relegated to a "customer" role then UTEX requests the PUC to explain its rationale and make an express ruling that signaling is not part of § 251(b)(5) and/or 251(c)(2) and must be purchased by UTEX from either AT&T or a 3rd party who then has to purchase from AT&T. If AT&T is correct in their position, then signaling can not be part of Interconnection under 251(c)(2) with the result that the cost standards in § 252(d) do not apply. This technically can not be a lawful result as signaling between networks is a requirement to mutually	SS7 is a signaling protocol, not interconnection.	*This issue is addressed in the text of the Award in the section titled "Technically Feasible Forms of Interconnection."*

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			exchange traffic. The current situation is anti-competitive in that AT&T can effectively stifle compensation for new technology traffic by requiring non-cost based compensation to pass traffic. To the extent AT&T is both requiring SS-7 signaling and then charging for such signaling and requiring it be outside of "Interconnection", then those proposals violate §§ 157, 201, 202, 203, 230, 251 and/or 252 and the FCC's rules and decisions relating to non-carrier customer traffic and intercarrier compensation. Contrary to AT&T's assertion, UTEX does have STP capabilities of its own that will be used to interconnect with AT&T's signaling network.		
UTEX 24	Has AT&T proven that SIP based interconnection for New Technology traffic is not technically feasible as defined in FCC Rule 51.5 and applied in FCC Rule 51.305(e)?	See contract references for Issue 18	AT&T has not proven that SIP based interconnection for New Technology traffic is not technically feasible as defined in FCC Rule 51.5 and applied in FCC Rule 51.305(e). If AT&T has it, or develops and implements this capability within its network during the time this ICA is in effect then it must interconnect with UTEX using this technology.	See answer to Issue 19. Terms and conditions for interconnection proposed by AT&T comply with all applicable FCC rules.	*This issue is addressed in the text of the Award in the section titled "Technically Feasible Forms of Interconnection."*
UTEX 25	Has there been successful SIP-based interconnection between carriers at a particular point in a network at a particular	See contract references for Issue 18	Yes, there has been successful Softswitch interconnection between carriers at a particular point in a network at a particular level of quality as described in FCC Rule 51.305(d)? No, AT&T has not successfully rebutted or adequately overcome the "substantial evidence that interconnection is technically feasible at that point, or at substantially similar points, at that	See answer to Issue 19. The terms and conditions for interconnection proposed by AT&T comply with all applicable FCC rules.	*This issue is addressed in the text of the Award in the section titled "Technically Feasible Forms of Interconnection."*

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	level of quality as described in FCC Rule 51.305(d)? If so, has AT&T successfully rebutted or adequately overcome the "substantial evidence that interconnection is technically feasible at that point, or at substantially similar points, at that level of quality?"		level of quality.		
UTEX 26	Should AT&T be required to use SIP based interconnection for New Technology traffic? If so, what are the appropriate terms for this new interconnection form?	See contract references for Issue 18	Yes, If AT&T has it, or develops and implements this capability within its network during the time this ICA is in effect then it must interconnect with UTEX using that technology.	See answer to Issue 19. The terms and conditions for interconnection proposed by AT&T comply with all applicable FCC rules.	*This issue is addressed in the text of the Award in the section titled "Technically Feasible Forms of Interconnection."*
Signaling for Legacy (POTS) and New Technology traffic					
UTEX 27	What are the parties' rights, duties and responsibilities under §§ 201, 251	See contract references for Issue 1, but see principally the parties' respective	UTEX does not propose to require SIP-based interconnection for Legacy (POTS) traffic, and supports SS7 signaling for that traffic type. Each party should bear the costs of operating their respective signaling networks. UTEX cannot be	The terms and conditions proposed by AT&T are consistent with the parties' rights, duties and responsibilities under §§ 201, 251 and 252 and other authorities. This issue is otherwise vague and not understood by AT&T. AT&T has	*This issue is addressed in the text of the Award in the section titled "Technically Feasible Forms of Interconnection."*

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	and 252 and current FCC rules relating to how they will physically connect their signaling equipment if and when signaling is and should be handled via a separate physical set of facilities?	interconnection and compensation attachments and appendices	required to "buy" signaling from AT&T, and certainly not at access prices. That would violate § 252(d)	proposed appropriate signaling terms and conditions. Resolution of this issue does not assist in determining appropriate contract language and the determination of the contract language is more properly addressed in Issues: NIM 2-1c, NIM-3c.	
UTEX 28	When each party is acting solely as an LEC, can one LEC be required to "buy" signaling from the other LEC as a "customer" without making this purchasing obligation mutual and reciprocal on the other LEC as well?	See contract references for Issue 27	UTEX **DOES** have its own STP capability and we are standing by, ready to interconnect our signaling network with AT&T's signaling network consistent with the requirements in §§ 251(b)(5) and 251(c)(2) and FCC Rule 51.305(a)(2)(v). Each party should bear the costs of operating their respective signaling networks. That is part of § 251 and 252 obligations. UTEX cannot be required to "buy" signaling from AT&T, and certainly not at access prices. That would violate § 252(d) But if one LEC (UTEX) must "buy" signaling from the other LEC (AT&T) then AT&T must be required to "buy" signaling from UTEX on mutual and reciprocal terms. See also UTEX Position Statement on UTEX 23.	UTEX is not entitled to obtain SS7 Links from AT&T pursuant to an ICA. To AT&T's knowledge, UTEX does not own an STP and therefore is not entitled to directly signal with AT&T using SS7 B-Links. UTEX also has the option of using an alternative provider for its signaling needs or UTEX can purchase SS7 signaling from AT&T through AT&T's tariffs. Resolution of this issue does not assist in determining appropriate contract language and the determination of the contract language is more properly addressed in Issue: NIM-3c.	*This issue is addressed in the text of the Award in the section titled "Signaling."*
UTEX 29	If one or both of the LECs must "buy" signaling from the other as a customer, are	See contract references for Issue 27	Signaling necessary for two LECs to interconnect and exchange telecommunications traffic is subject to § 251(b)(5) and/or § 251(c)(2). It is not, and cannot lawfully be subjected to, any alleged § 251(g) carve out.	See answer to Issue 28	*This issue is addressed in the text of the Award in the section titled "Signaling."*

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	the terms and conditions for this arrangement governed by § 251(b)(5) and § 252(d)(2) reciprocal compensation/transport and termination or § 251(c)(2) and § 252(d)(1) Interconnection, or must signaling interconnection instead be obtained as part of a § 251(g) "Continued" Exchange Access and Interconnection Requirement?		UTEX **DOES** have its own STP capability and we are standing by, ready to interconnect our signaling network with AT&T's signaling network consistent with the requirements in §§ 251(b)(5) and 251(c)(2) and FCC Rule 51.305(a)(2)(v).		
Routing of Legacy (POTS) and New Technology traffic:					
UTEX 30	Does or can the routing of a call determine the retail or intercarrier compensation rating of that call?	See contract references for Issue 1, but see principally the parties' respective interconnection and compensation attachments and appendices and even more particularly UTEX's	Order 30 removed UTEX's "refresh" interconnection terms, but that merely resulted in the revival of UTEX's 2005 terms. Those terms also address routing, particularly in the 2005 call flow diagrams. No, the routing does not necessarily determine rating. Nonetheless, UTEX would support separate routing for each identified traffic types in order to facilitate rating and billing so long as it does not result in non-cost based charges for § 251(b)(5) traffic.. Order 30 eliminated UTEX's "refresh" proposal	That depends on what is meant by "intercarrier compensation rating" and the jurisdiction of the call. For example, different intercarrier compensation applies to a call that is routed only through an end office, versus a call that is routed through a tandem and an end office. On the other hand, a call that is interLATA in nature is subject to switched access tariffs regardless of how the call is routed. Resolution of this issue does not assist in determining appropriate contract language and	*The Arbitrators have addressed intercarrier compensation for various types of traffic in AT&T NIM issues 6-1 through 6-16.*

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		Attachment NIM, along with its Appendices, Attachments and Exhibits, including the Call Flow Diagrams in Exhibit 4 to Appendix 2 to NIM	to to use $0.0007 per minute of use. That price covers both end office and tandem. UTEX's 2005 proposals called for bill and keep for all § 251(b)(5) traffic when traffic was in balance, and we are still willing to support that result. But if the PUC refuses to employ bill and keep then the only lawful alternative is the FCC's $0.0007 rate for all § 251(b)(5) traffic, including all traffic that also falls within § 201 as prescribed in the *Core Mandamus Order*. There are many "InterLATA" calls (as AT&T defines it) that are not subject to access. The FCC has repeatedly recognized and so held. AT&T is trying to apply access to traffic that is "non-access" traffic. *See* T-Mobile.	the determination of the contract language is more properly addressed in Issue: NIM-6-15.	
UTEX 31	How will each of the call types shown in the call flow diagrams set out in UTEX's proposed ICA, Exhibits 3 and 4 to Appendix 2 to NIM be routed?	See contract references for Issue 30	UTEX's call diagrams set out UTEX's position on signaling routing, rating and billing. UTEX requests that the curent state of the law and the parties' specific rights be reflected detailed diagrams that are a part of the contract. This includes resolving all Intercarrier Compensation issues. UTEX incorporates the call flow diagrams into this answer as an attached appendix to the DPL. UTEX's terms comprehensively address trunking through text as well as in the call flow diagrams. The Call Flow diagrams are intended to represent the "universe" of possible calls between the parties and pictorially illustrates routing and rating. While we understand AT&T opposes much of our language, we are still unsure of exactly the intent of the AT&T proposed contractual terms although the general result is becoming more clear. To the extent AT&T terms are the same or are similar to our proposed terms we currently	While call flow diagrams may be interesting or helpful in some cases, written terms and conditions are legally necessary to establish any and all contract terms, including those regarding the appropriate treatment of intercarrier traffic. Furthermore, UTEX's diagrams are unclear.	*The Arbitrators find that UTEX's assertion that its written textual terms comprehensively address trunking requirements calls into question the need for diagrams. The Arbitrators note that diagrams have not been needed for any of the ICAs arbitrated at the Commission to date, and that AT&T Texas has expressed opposition to their inclusion here. Accordingly, the Arbitrators do not adopt UTEX's call-flow diagrams for inclusion in this ICA.* *To the extent the parties find such diagrams useful in administering the ICA, the Arbitrators suggest that they be jointly developed by the Parties. Absent such development, it is unlikely that a common understanding of such diagrams could be achieved.*

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			have an understanding that AT&T intends an opposite outcome as our intended outcome notwithstanding that the words may be the same or similar. We also now know that AT&T and the Commission have interpreted the words the Arbitrators have now required us to employ in Order 30 in a way that is exactly the opposite of our intended meaning. For the record, those words mean what UTEX intends them to mean, not the *post-hoc* spin applied in Docket 33323. UTEX tried to fix this problem in its refresh language but the Arbitrators required us to go back to the old language. This makes inclusion of call flow diagrams into the contract even more important because that will ensure each party's "intent" (and, more importantly the intent of the Arbitrator) is clear and explicit. This is will finally provide some measure of business certainty, which was addressed in the Second Amended Petition. Even if UTEX's proposed classifications for calls are rejected in favor of AT&T's call classifications, we still request that conforming Call Flow Diagrams be devised, so that UTEX will know what to do and how to do it, and UTEX will know when something will or will not result in a bill from AT&T and the amount of the bill. To date AT&T has refused to take part in the creation or use of call flow diagrams although many of their extra-contractual references (such as MECAB, MECOD, and ATIS) have explicit call flow diagrams and call flow diagrams are often used in this industry to show parties' intent. AT&T will not engage because the last thing it wants is certainty or clarity because that		

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			will prevent it from turning around and attacking what it says it wants today but later decides it opposes		
UTEX 32	Is it appropriate to require separate routing of Legacy and New Technology Traffic?	See contract references for Issue 30	UTEX believes separate routing is appropriate, and attempted to propose terms that would accomplish this.	AT&T believes that this issue is no longer relevant as a result of the rulings in Order 30. Legacy and New Technology were defined terms that are not contained in the contract language subsequent to Order 30. If the issue remains relevant, then AT&T offers the following: See answer to Issues 2 and 19. AT&T's proposed contract terms and definitions for purposes of exchanging traffic with UTEX are consistent with the Act.	*The Arbitrators agree with AT&T Texas that New Technology is not a defined term in this ICA, and further find that current law provides no basis for the routing of traffic on a technology-specific basis. Thus, the Arbitrators do not adopt language addressing this issue.*
Rating of Legacy (POTS) and New Technology traffic					
UTEX 33	How will each of the call types shown in the call flow diagrams set out UTEX's proposed ICA, Exhibit 4 to Appndix 2 to NIM be rated??	See contract references for Issue 1, but see principally the parties' respective interconnection and compensation attachments and appendices and even more particularly Attachment NIM, along with its Appendices, Attachments and Exhibits, including the Call Flow Diagrams in Exhibit 4 to Appendix 2 to	UTEX's call diagrams set out UTEX's position on signaling routing, rating and billing. **UTEX's understanding of AT&T's position on interconnection, signaling, routing and rating of the traffic UTEX intends to handle:** <u>Wholesale services</u> UTEX is not allowed to compete as a provider for to ESPs by using Interconnection under the Act. The ESP exemption only applies to traffic when ESPs purchase service from AT&T to communicate with AT&T retail Customers. An AT&T affiliate offers a AVOICES product to IP providers which materially discounts Access Tariffs. AT&T Texas offers a TipTOP Tariff product that is used by its VoIP affiliate. No ESP exemption is claimed or needed as TIP TOP limits service to only local areas and is an access-like arrangement in any event. UTEX may	See answer to Issue 31.	*The Arbitrators have addressed this issue under DPL Issue UTEX 31.* *Additionally, the Arbitrators find that UTEX's proposed diagrams lack sufficient specificity for inclusion in the ICA in their current form, as they are devoid of locational information. The Arbitrators hold that, absent such specificity, it is impossible to rate calls; current law recognizes geographical locations and end-to-end analysis as key determinants of call rating. Accordingly, the Arbitrators do not adopt UTEX's call-flow diagrams for inclusion in this ICA.*

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		NIM	not provide a wholesale service to connect to TipTop customers. Since UTEX is not allowed to interconnect with AT&T to provide the services in issue AT&T may charge any and all parties in the call as an IXC with AT&T providing 100% of the Exchange Access. Contract references are not necessary or appropriate and AT&T's tariffs and business practices control over any contract terms in any event. Specifically no provision of FTA 96 creates an obligation to have contractual terms that govern interconnection, signaling, routing or rating since UTEX has no right to interconnect under §§ 251/252 as an LEC for the traffic in issue. Thus AT&T is free to impose terms based upon AT&T Access Tariffs and its developing business practices. <u>UTEX's numbering resources</u> UTEX is not allowed to use interconnection under the Act to provide any "inbound" wholesale services and thus AT&T may block such call attempts if UTEX engages in wholesale services. If UTEX wishes to use its numbering resources to receive calls originating on AT&T's network it must purchase AT&T's 500 service and pay AT&T millions of dollars in NRC and approximately $.04 per minute. Unless and until UTEX becomes AT&T's access customer AT&T may block all calls from its network to any ESP until and unless UTEX agrees to purchase access services from AT&T. Specifically AT&T may block any numbers including but not limited to 500 numbers or others assigned to		

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			UTEX as a carrier if UTEX assigns such numbers to an ESP. Signaling AT&T insists SS7 signaling must be used to control all traffic between the two parties. At the same time, UTEX cannot interconnect its signaling elements to AT&T's signaling elements as a peer. Instead, UTEX must purchase signaling from AT&T out of the access tariff, or obtain it from someone who purchases from AT&T out of the access tariff in order for calls to be set up and torn down in the manner AT&T advocates should be mandatory. Routing AT&T's demands that almost all of the traffic in issue must be be routed over Interexchange Access trunks. Rating and billing AT&T and its family of companies is not obligated to compensate UTEX for any traffic. AT&T claims none of it is § 251(b)(5) traffic. Calls are rated based on the signaling information presented or not presented on each individual call. Unless there is a local CPN on the call, the call will be billed at the access rate AT&T deems appropriate by Tariff. But Routing does not really matter in any event from a rating perspective because AT&T has modified its billing systems to charge UTEX Tariff Access Charges based upon either signaling information presented or not presented on each individual call. In effect, although AT&T says it wants the calls		

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			routed over access trunks, if "local" trunks are used the new technology traffic in issue will still be treated as if it was delivered over Feature Group D Access trunks and with UTEX being treated as the IXC and access customer. While the agreement calls for Jointly Provided Access via MPB, AT&T can refuse to recognize traffic as JPA and AT&T may collect 100% of the access revenues from UTEX and/or the wholesale customer.		
UTEX 34	Is the call § 201 traffic? Is the call § 251-252 traffic? Is the call carved out by § 251(g) so that it can lawfully be treated as Exchange Access traffic? If the call can lawfully be treated as Exchange Access traffic, who is the access customer of one, the other or both of the two LECs? Is the call one that "simultaneously implicates the regimes of both § 201 and of §§ 251-252" and falls within the	See contract references for Issue 33	Much, if not all, of the traffic that will be exchanged between UTEX and AT&T will be subject to § 201 because it is jurisdictionally interstate. All of the traffic in issue will be §§ 251/252 traffic. Yes there will be a considerable amount that "simultaneously implicates the regimes of both § 201 and of §§ 251-252" and falls within the "intersection" of all of § 201 and §§ 251-252 so that "[n]either regime is a subset of the other." As discussed above, none of the traffic (with the possible exception of calls originating on AT&T's network where it is the intraLATA IXC) can be subjected to exchange access. If it is subject to access, then UTEX and AT&T are joint access providers and neither is the customer of the other. As LECs – here UTEX and AT&T – there can only be "Telephone Exchange Service" or "Exchange Access Service" and there is no other third category as between the two LECs is there and there lawfully be some third category under the Act and current rules, given the FCC's acknowledgment and the DC Circuit's finding in *Bell Atl. Tel. Companies v. FCC*, 206 F.3d 1	It is unclear what UTEX intends by its issue; however, in an attempt to provide a position, see answer to Issue 2. Also, AT&T's obligation is to provide an interconnection agreement pursuant to sections 251 and 252. UTEX's proposed issue goes beyond the scope of the obligations set forth in the Act. Resolution of this issue does not assist in determining appropriate contract language. The determination of the contract language is more properly addressed in DPL Issues AT&T NIM-6 Issues 1-16.	*This issue of intercarrier compensation for Enhanced Service Provider Traffic is addressed in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers." The Arbitrators conclude that AT&T Texas has the obligation to interconnect with UTEX pursuant to sections 251 and 252 of the FTA. For the reasons stated in the text of the Award and DPLs relating to intercarrier compensation, specifically AT&T NIM 6-1 through 6-16, the intercarrier compensation provisions approved by the Arbitrators are consistent with FTA §§ 251 and 252 and FCC rules regarding reciprocal compensation and access charges.*

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	"intersection" of all of § 201 and §§ 251-252 so that "[n]either regime is a subset of the other?" If there is a third category besides Telephone Exchange and Exchange Access what is that category and what is the rate?		(D.C. Cir. 2000) that there are only two categories, and "telephone exchange service" and exchange access service "occupy the [LEC] field"? If AT&T ever states a position on this topic – which it has steadfastly refused to do to date – then UTEX reserves the right to respond. UTEX still does not know for sure what rate AT&T is proposing to apply in all circumstances, or how AT&T can justify a rate that is not based on § 251(b)(5) and lawful under § 252(d). If the PUC holds there is some category of traffic exchanged between LECs that is not even initially the "telecommunications" covered by § 251(b)(5) (*i.e.*, it is not covered at all, so you do not even consider whether it is temporarily carved out through § 251(g)) like traditional exchange access to IXCs), then that can only mean it is wholly within § 201. The price must therefore be just and reasonable, but there has been no showing that access charges are just and reasonable for this previously non-access traffic. There has been no showing that AT&T should be able to always recover access, but never pay access. There must be some showing of what a just and reasonable rate is – using § 201 considerations. Plus, the application of the charge must not be unreasonably discriminatory or provide an unjust preference under § 202. UTEX submits that any "new" category and any "new" rate must be cost-based (even if not subject to TELRIC) and it must still be reciprocal. The PUC will, therefore, be setting rates under § 201 alone. If AT&T wants to go down that road, then it has the burden of proving its proposed prices and terms pass muster under		

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			§§ 201, 202 and 203.		
Intercarrier Compensation for Legacy (POTS) and New Technology traffic					
UTEX 35	Has the FCC promulgated a new rule, or reinterpreted its rules, that would change or amend its declaration that there are currently several different pricing distinctions based on identity and/or use?	See contract references for Issue 33	The FCC has characterized its current rules several orders. FNPRM, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC 05-33 ¶¶ 3-5, 20 FCC Rcd 4685 (rel. Mar. 2005), Order, *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, FCC 04-96, 19 FCC Rcd. 7457 at note 47 (2004) ("*AT&T Declaratory Ruling*") and NPRM, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC 01-132, ¶¶ 5-6, 16 FCC Rcd 9610, 9613-14 (rel. Apr. 2001), and it has not changed its rules from having this principle. The rules still impose several different pricing distinctions based on identity and/or use.	See Answer to 34 with respect to DPL Issues that would address compensation and the contract language disputes to be resolved. It is not clear how this question relates to the parties' positions with respect to any term or condition in an Agreement between the parties. Furthermore, the FCC directed the PUCT to make a determination based on existing law.	*The Arbitrators have addressed intercarrier compensation in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers" and in response to DPL Issues AT&T NIM 6-1 through 6-16. To the extent that this issue is not addressed in those sections of the Award, the Arbitrators have concluded that resolution of the issue is not necessary to determine the appropriate ICA language for intercarrier compensation.*
UTEX 36	Did the decisions in the *AT&T Declaratory Ruling* and the credit card declaratory rulings that if IP is used only for transmission and there is no change in content or an offer of enhanced function then the service is not an enhanced/information service but is instead a	See contract references for Issue 33	No. This was a declaratory ruling, which by definition applied current law. All that decision did was clarify that if IP is used for transmission only – and there is not a net change of form, a change of content or an offer of enhanced functions then the service is a Telecommunications Service.	See Answer to 34 with respect to DPL Issues that would address compensation and the contract language disputes to be resolved. It is not clear how this question relates to the parties' positions with respect to any term or condition in an Agreement between the parties	*UTEX has not identified any specific ICA language to which this issue relates. The Arbitrators conclude, therefore, that resolution of this issue is not necessary.*

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Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
	telecommunications service subject to the access charge rules constitute a change in law, or was it instead an interpretation of current rules?				
UTEX 37	Has the FCC changed the law so that its description stated in FCC 01-132 is no longer correct?	See contract references for Issue 33	This is what the *current rules* mean and how they operate: 5. Interconnection arrangements between carriers are currently governed by a complex system of intercarrier compensation regulations. These regulations treat different types of carriers and different types of services disparately, even though there may be no significant differences in the costs among carriers or services. The interconnection regime that applies in a particular case depends on such factors as: whether the interconnecting party is a local carrier, an interexchange carrier, a CMRS carrier or an enhanced service provider; and whether the service is classified as local or long-distance, interstate or intrastate, or basic or enhanced. 6. Existing intercarrier compensation rules may be categorized as follows: access charge rules, which govern the payments that interexchange carriers ("IXCs") and CMRS carriers make to LECs to originate and terminate long-distance calls; and reciprocal compensation rules, which govern the compensation between telecommunications carriers for the transport and termination of local traffic. Such an organization is clearly an oversimplification, however, as both sets of rules are subject to various exceptions	See Answer to 34 with respect to DPL Issues that would address compensation and the contract language disputes to be resolved. It is not clear how this question relates to the parties' positions with respect to any term or condition in an Agreement between the parties.	*The Arbitrators have addressed intercarrier compensation in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers" and in response to DPL Issues AT&T NIM 6-1 through 6-16. To the extent that this issue is not addressed in those sections of the Award, the Arbitrators have concluded that resolution of the issue is not necessary to determine the appropriate ICA language for intercarrier compensation.*

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Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
			(e.g., long-distance calls handled by ISPs using IP telephony are generally exempt from access charges under the enhanced service provider (ESP) exemption). *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC 01-132, ¶¶ 5-6, 16 FCC Rcd 9610, 9613-14 (rel. Apr. 2001) (emphasis added) The FCC has not changed the rules since that time, except to the extent it brought some traffic expressly within § 251(b)(5) it previously said was not, in the *Core Mandamus Order*. This quote is directly applicable because it explains that some "interexchange" traffic (as AT&T defines it) is not subject to access. The traffic in issue here is precisely the "long-distance calls handled by ISPs using IP telephony" the FCC was addressing.		
UTEX 38	Was the FCC's statement in 2004 in FCC 04-36 that all uses of the PSTN should contribute on an equal basis part of a new rule that has gone into effect?	See contract references for Issue 33	The FCC's statement in NPRM, *In re IP-Enabled Services*, WC Docket 04-36, FCC 04-36, ¶ 33, 19 FCC Rcd 4863, 4885 (rel. Feb. 2004) that all uses of the PSTN should contribute on an equal basis not an interpretation of current rules. It was instead a statement of policy behind FCC contemplated rules that were never promulgated.	See Answer to 34 with respect to DPL Issues that would address compensation and the contract language disputes to be resolved. It is not clear how this question relates to the parties' positions with respect to any term or condition in an Agreement between the parties.	*The Arbitrators have addressed intercarrier compensation in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers" and in response to DPL Issues AT&T NIM 6-1 through 6-16. To the extent that this issue is not addressed in those sections of the Award, the Arbitrators have concluded that resolution of the issue is not necessary to determine the appropriate ICA language for intercarrier compensation.*
UTEX 39	If the statement in FCC 04-36 was an interpretation of current rules did that statement mean that access charges are the	See contract references for Issue 33	Even if the statement was an interpretation of current law, it does not mean that the "equal basis" for all traffic to contribute is access. To the contrary, the only lawful equal basis would be cost based prices that met the requirements of § 251(b)(5) and § 252(d)(2). The Act requires that LEC-LEC intercarrier compensation be	See Answer to 34 with respect to DPL Issues that would address compensation and the contract language disputes to be resolved. AT&T does not understand how this question relates to the parties' positions with respect to any term or condition in an Agreement between	*The Arbitrators have addressed intercarrier compensation in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers" and in response to DPL Issues AT&T NIM 6-1 through 6-16. To the extent that this issue is not addressed in those sections of the Award, the*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
	rate at which "all" minutes should equally contribute?		cost-based and consistent with § 252(d)(2), with only a transitional exception for continued exchange access treatment for IXC-provided "telephone toll" under § 251(g)	the parties.	*Arbitrators have concluded that resolution of the issue is not necessary to determine the appropriate ICA language for intercarrier compensation.*
UTEX 40	Did the traffic involved in this issue exist at the time the 1996 amendments were inserted into the Act?	See contract references for Issue 33	No it did not. There were no CLECs and there was no traffic like that processed by UTEX's non-carrier Wholesale Customers that provide service using New Technology.	See Answer to UTEX 34 with respect to DPL Issues that would address compensation and the contract language disputes to be resolved. See answer to Issue 2. Further, it is not clear how this question relates to the parties' positions with respect to any term or condition in an Agreement between the parties.	*UTEX has not identified any specific ICA language to which this issue relates. The Arbitrators conclude, therefore, that resolution of this issue is not necessary. The Arbitrators address the specific terms of the ICA in connection with other DPL issues.*
UTEX 41	Given that the traffic in issue is between LECs, what law allows it to be carved out from § 251(b)(5)?	See contract references for Issue 33	This is § 201/251(b)(5) traffic as a matter of law. The DC Circuit made it clear that LEC-LEC traffic is and can only be § 251(b)(5) traffic as a matter of law under *WorldCom v. FCC*, 288 F.3d 429, 433-434 (D.C. Cir. 2002). The FCC's subsequent decision to bring LEC-LEC traffic involving the Internet within § 251(b)(5) using its § 201 authority is fully consistent with that decision, and supports UTEX's position.	See answer to Issue 40.	*The Arbitrators have addressed intercarrier compensation in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers" and in response to DPL Issues AT&T NIM 6-1 through 6-16. To the extent that this issue is not addressed in those sections of the Award, the Arbitrators have concluded that resolution of the issue is not necessary to determine the appropriate ICA language for intercarrier compensation.*
UTEX 42	Under current law can any enhanced/information services that are not voluntarily using access or provided via a Telephone Toll Service be lawfully subjected to the Exchange Access regime?	See contract references for Issue 33	No. Mandatorily applying access charges to access-exempt traffic would violate FCC rules and the Act.	See Answer to UTEX 34 with respect to DPL Issues that would address compensation and the contract language disputes to be resolved. See answer to Issues 1 and 2. Further, it is not clear how this question relates to the parties' positions with respect to any term or condition in an Agreement between the parties.	*This issue of intercarrier compensation for Enhanced Service Provider Traffic is addressed in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers."*
UTEX	Did the Act	See contract	If AT&T was the LEC that provided the direct	See Answer to UTEX 34 with respect to DPL	*The Arbitrators have addressed intercarrier*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
43	codify the ESP Exemption with the effect that the PUC cannot lawfully impose Exchange Access charges directly or indirectly by securing them from an LEC like UTEX?	references for Issue 33	PSTN connectivity to UTEX's non-carrier Wholesale Customers it could not lawfully require them to buy from the access tariff even though AT&T apparently does this very thing. AT&T cannot lawfully obtain indirectly that which it cannot require directly. Besides the Act did codify the ESP Exemption through its definitions of "Information Service" "Telecommunications Service" "Telephone Toll Service" Telephone Exchange Service" "Exchange Access Service and as part of § 251(b)(5), § 251(g) and § 252(d). The U.S. District Court for the District of Columbia recently squarely held that the Act codified the ESP Exemption, confirming UTEX's position. *See* Memorandum Order, *Paetec Communications, Inc. v. CommPartners, LLC*, Civil Action No. 08-0397 (JR) (D.C. D.C., Feb. 18, 2010).	Issues that would address compensation and the contract language disputes to be resolved. No. AT&T disagrees that the provisions UTEX references provide the authority regarding ESP that UTEX asserts or exempts it from access charges.	*compensation in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers" and in response to DPL Issues AT&T NIM 6-1 through 6-16. To the extent that this issue is not addressed in those sections of the Award, the Arbitrators have concluded that resolution of the issue is not necessary to determine the appropriate ICA language for intercarrier compensation.*
UTEX 44	Do the Act and current rules incorporate and apply technological considerations to determine the regulatory classification of a service? For example do the definitions of "enhanced service" and "information service" rest on the technology	See contract references for Issue 33	Yes, but the Act and the rules rest entirely on technological considerations based on the capabilities of the service and the service that is offered as a result of using that technology.	See Answer to 34 with respect to DPL Issues that would address compensation and the contract language disputes to be resolved. It is not clear how this question relates to the parties' positions with respect to any term or condition in an Agreement between the parties	*The Arbitrators have addressed intercarrier compensation in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers" and in response to DPL Issues AT&T NIM 6-1 through 6-16. To the extent that this issue is not addressed in those sections of the Award, the Arbitrators have concluded that resolution of the issue is not necessary to determine the appropriate ICA language for intercarrier compensation.*

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	used to provide service and the capabilities offered by that technology?				
UTEX 45	Can either the ESP or UTEX be subjected to access charges under Rule 69.5?"	See contract references for Issue 33	Rule 69.5 expressly applies only to IXCs that provide "telecommunications service." UTEX is not an IXC. UTEX's non-carrier Wholesale Customers do not provide telecommunications service.	See Answer to 34 with respect to DPL Issues that would address compensation and the contract language disputes to be resolved. UTEX is responsible for access charges. See answer to Issues 8 and 9.	*The Arbitrators have addressed intercarrier compensation in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers" and in response to DPL Issues AT&T NIM 6-1 through 6-16. To the extent that this issue is not addressed in those sections of the Award, the Arbitrators have concluded that resolution of the issue is not necessary to determine the appropriate ICA language for intercarrier compensation.*
UTEX 46	If the traffic in issue is subject to the Exchange Access regime, then what law allows a departure from the FCC's statement in Note 92 of the *AT&T Declaratory Ruling*?	See contract references for Issue 33	When it comes to "access" traffic all the LECs involved are engaged in providing exchange access service and one LEC is not the customer of the other LEC. The FCC held in the *Local Competition Order* (1st R&O, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, FCC 96-325 ¶ 553, CC Docket Nos. 96-98, 95-185, 11 FCC Rcd 15499, 15780-15781), that when two LECs are interconnecting under § 251(c)(2) they are co-carriers and each LEC individually looks to the "joint access customer" for payment. The FCC's rules require LECs to follow MECAB/ Memorandum Opinion and Order, *In the Matter of Waiver of Access Billing Requirements and Investigation of Permanent Modifications*, CC Docket No. 87-579, DA 87-1858 ¶¶ 29-31, 3 FCC Rcd 13 (rel.	See Answer to UTEX 34 with respect to DPL Issues that would address compensation and the contract language disputes to be resolved. See answers to Issues 8 and 9. AT&T does not understand how this question relates to the parties' positions with respect to any term or condition in an Agreement between the parties.	*The Arbitrators have addressed intercarrier compensation in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers" and in response to DPL Issues AT&T NIM 6-1 through 6-16. To the extent that this issue is not addressed in those sections of the Award, the Arbitrators have concluded that resolution of the issue is not necessary to determine the appropriate ICA language for intercarrier compensation.*

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			Dec. 1987). The FCC held that the variation now known as the "Single Bill Method" or "Single Bill Option" can be used only of both LECs voluntarily agree by separate contract to use that arrangement in MO&O, *In the Matter of Waiver of Access Billing Requirements and Investigation of Permanent Modifications*, CC Docket No. 86-104, FCC 87-252, 2 FCC Rcd 4518 (rel. Jul. 1987); MO&O, *In the Matter of Waiver of Access Billing Requirements and Investigation of Permanent Modifications*, CC Docket No. 87-579, DA 87-1858 ¶¶ 29-31, 3 FCC Rcd 13 (rel. Dec. 1987). The FCC made that quite clear in the *AT&T Declaratory Ruling*. The cited FCC decisions clearly prohibit AT&T from being able to require UTEX to be an "access customer." If this is access then it is jointly provided access. The rules and cited decisions (as well as MECAB, which both AT&T and UTEX advocate) do not allow one LEC to force another joint provider LEC to be responsible to the other LEC for the other LEC's access entitlement. Unless there is voluntary consent and an express agreement, each LEC issues its own bill for its portion of access to the access customer.		
Extent to which a party should be allowed to re-litigate decisions in the WCC case incorporated in the current agreement					
UTEX 47-49	WITHDRAWN				
UTEX 50	If a party can seek new, additional or different terms on a particular topic that was previously	UTEX Ancillary Functions Appendix 1 Common Cageless Collocation; Appendix 3 to	UTEX The party proposing to do so should demonstrate that there are changed circumstances, additional facts, new law or considerations that were not previously presented to or considered by the Commission when it imposed the source language.	AT&T believes that this issue is no longer relevant as a result of the rulings in Order 30. If the issue remains relevant, then AT&T offers the following: In a Section 252 arbitration, either party may	*The Arbitrators conclude that a party to an arbitration under FTA § 252 may request that the Commission resolve any open issues between the parties. FTA § 252(b)(1)-(3).*

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	arbitrated, what justification should be given that allows it to do so?	NIM ISDN Interconnection	AT&T is seeking to secure different terms than were presented to and approved by the PUC in prior arbitrations on the same topic, including the WCC case, the Alpheus case and in Docket 28821. It has not demonstrated that there are changed circumstances, additional facts, new law or considerations that were not previously presented to or considered by the Commission when it imposed or approved the original language. Where UTEX is proposing to alter terms or achieve a different result on an issue that has been specifically arbitrated by the PUC UTEX accepts and will fulfill its duty to show changed circumstances, additional facts, new law or considerations that were not previously presented to or considered by the Commission.	petition the Commission to resolve any open issue between the parties. Typically, however, a party would not ask the Commission to revisit an issue unless circumstances had changed, whether legal, economic, technological, etc.	
UTEX 51	Should a party be allowed to relitigate issues that were resolved in the original WCC arbitration and affirmed by the 5th Circuit, and eliminate rights or principles established in that case without first demonstrating good cause?	GTC: Whereas clauses 3-6; all references to applicability; 1.1.1; 1.3; 46.1; 47.1; 51 (definitions); 54.1 UTEX Attachment 4 Ancillarry Functions, Appendix 1 Common Cageless Collocation; Appendix 3 to NIM ISDN Interconnection	AT&T should be required to provide there are changed circumstances, additional facts, new law or considerations that were not previously presented to or considered by the Commission in the WCC case AT&T is attempting to secure a different result and different terms than what was obtained in the WCC arbitration. It wants to move from the Texas Collocation Tariffs to its generic agreement terms and prices. It wants to eliminate Attachment Collocation of Fiber-based RSMs and Ethernet. It should not be allowed to relitigate these issues, particularly since it would inhibit the PUC's ability to focus on the real issues that must be resolved in this case.	See answer to Issue 50. AT&T is not opposed to referring to the tariff for Collocation terms and conditions in their entirety; however, UTEX should not be allowed to incorporate some provisions from the tariff and others from previously approved agreements. In addition, it is not clear how this question relates to the parties' positions with respect to other terms or conditions in an Agreement between the parties.	*The Arbitrators conclude that a party to an arbitration under FTA § 252 may request that the Commission resolve any open issues between the parties. FTA § 252(b)(1)-(3).*
OSS					
UTEX 52	Should UTEX be required to use	UTEX GTC §§ 51.49, 51.54,	AT&T will undoubtedly mischaracterize UTEX's position on OSS so as to portray UTEX	AT&T rejects UTEX's unsupported premise that its OSS "does not have a method to	*This issue is addressed in the text of the Award in the section titled "OSS and*

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Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
	AT&T's OSS when that system does not have a method to successfully pre-order, order or obtain provisioning a specific UNE or interconnection form that is provided for in this Agreement?	51.55, 51.90, 51.91, 51.108, 51.109, 51.111; Attachment 5 Liquidated Damages; Attachment 2 Raw Material UNE §§ 5.3, 8.8 All AT&T provisions addressing OSS	as wanting a unique and special set of OSS terms and completely unwilling to use the OSS AT&T has. This is not correct; AT&T will make these arguments to try to hide the fact that its OSS simply cannot handle the things that UTEX is trying to do. Where AT&T's OSS has a functioning and effective method to pre-order, order or secure provisioning of a feature, functionality, service or method and means to interconnect then UTEX is more than willing to use it, as long as it works and does not require UTEX to waive its statutory and contractual rights. The problem is that AT&T's systems do not have methods to pre-order, order or secure provisioning of several UNEs or methods to access UNEs even those methods are prescribed by law, or allowed by law. AT&T purposefully designs its OSS to require CLECs to hew to AT&T's skewed notions of the law, the rules or its ICAs. There is no electronic means to pre-order, order or secure provisioning of a loop to a pole or a sub-loop. Similarly, AT&T's OSS requires CLECs seeking to interconnect to assume the role of a customer rather than a peer, and even more particularly to be an access customer and pay access – or to waive specific ICA rights – merely in order to accomplish interconnection. Interconnection under § 251(c)(2) is not, and cannot lawfully be required to constitute, the purchasing or ordering of an access service because Exchange Access is for IXCs that provide Telephone Toll; Interconnection is governed by § 251(c)(2) and § 252(d)(1), and both of those on their face prohibit access	successfully pre-order, order or obtain provisioning a specific UNE or interconnection". In fact, the millions of CLEC LSRs that have been processed by AT&T's OSS during the last decade are more than enough proof that UTEX is playing fast and loose with the facts. The terms and conditions of the agreement proposed by AT&T provide adequate mechanisms for ordering all services available under the agreement. See also AT&T's Position Statements in AT&T Issue NIM 8. AT&T also provides a process whereby any CLEC, including UTEX, can request the creation of ordering processes for new services that are not provided for under this agreement. The Bona Fide Request ("BFR") process was created for just such situations. If a CLEC has a need for a service that is not provided for under this agreement, it can request that AT&T develop the service (including the ordering process) through the issuance of a BFR. AT&T can then determine the technical feasibility of the CLEC's request and determine the associated costs for the service development. Additionally, AT&T collaboratively develops ordering procedures via the CLEC User Forum ("CUF") and the Change Management Process ("CMP") collaborative. The CUF and CMP are monthly collaborative meetings that are open to all CLECs doing business within AT&T's local footprint. UTEX is free to attend these industry collaborative meetings and is free to request the development of ordering processes for new services it may want to order from AT&T.	*Ordering."*

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			treatment. UTEX's proposed terms largely accept AT&T's OSS, but only when it works and does not require UTEX to waive rights and does not operate to deny, delay or frustrate interconnection or access to UNEs. AT&T's suggestion that UTEX should be denied access to a UNE or interconnection prescribed by the agreement until forms and procedures are developed by CMP and CUF is flatly illegal. If and when "collaborative" forms come out of those processes that allow ordering of interconnection, sub-loops and loops to a NID on a pole, then UTEX will use them. But it has a right to interconnection and all UNEs, and lack of a standard form cannot be used as an excuse to deny access.		
UTEX 53	Should UTEX be effectively precluded from obtaining a specific form of interconnection or a particular UNE pending AT&T's internal development of an electronic method?	See contract references for Issue 52	See position statement for Issue 52.	See answer to Issue 52.	*This issue is addressed in the text of the Award in the section titled "OSS and Ordering."*
UTEX 54	Should UTEX be able to submit a manual form to pre-order, order or secure provisioning of a specific form of	See contract references for Issue 52	See position statement for Issue 52. This issue is not moot as a result of Order 30. While the Arbitrators struck UTEX's "refresh" order forms the UTEX 2005 terms also had manual forms. In any event the question remains regardless of whether a specific form is prescribed in the agreement.	AT&T believes that this issue is no longer relevant as a result of the rulings in Order 30. If it remains relevant, then see answer to Issue 52. AT&T's OSS is the result of more than 10 years of collaborative efforts and cooperation with the CLEC industry at large. UTEX, on the other hand, proposes special treatment that would be	*This issue is addressed in the text of the Award in the section titled "OSS and Ordering."*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
	interconnection or a particular UNE until AT&T development a workable electronic method?			both prohibitively expensive and of highly uncertain results, especially given the vast differences between the parties in regard to the types of services UTEX is requesting via this arbitration.	
UTEX 55	Can AT&T refuse to not cooperate with UTEX to develop an acceptable manual form to pre-order, order or secure provisioning of a specific form of interconnection or a particular UNE, and then use the lack of a form to refuse and frustrate UTEX's attempts to secure that interconnection or UNE?	See contract references for Issue 52	See position statement for Issues 52 and 54.	AT&T believes that this issue is no longer relevant as a result of the rulings in Order 30. If it remains relevant, then AT&T offers the following: AT&T's OSS is the result of more than 10 years of collaborative efforts and cooperation with the CLEC industry at large. UTEX, on the other hand, proposes special treatment that would be both prohibitively expensive and of highly uncertain results, especially given the vast differences between the parties in regard to the types of services UTEX is requesting via this arbitration.	*This issue is addressed in the text of the Award in the section titled "OSS and Ordering."*
Liquidated Damages/Performance Standards					
UTEX 56	Do AT&T's proposed Performance Standards provide sufficient incentive for AT&T to not breach any and all	UTEX GTC §§ 51.49, 51.54, 51.55, 51.90, 51.91, 51.108, 51.109, 51.111; Attachment 5 Liquidated Damages;	Order 30 removed UTEX's refresh liquidated terms, but that merely means that the 2005 Attachment 5 Liquidated Damages proposals come back in to play. Hence Liquidated Damages is still relevant. At some point the PUC will admit that its performance standards and measurements are useless and worthless, and they do not	Yes, AT&T's proposed performance standards provided sufficient incentives. AT&T provides liquidated damages and PM for all UNEs required under Act. The performance measurements and standards proposed by AT&T were developed collaboratively by	*This issue is addressed in the text of the Award in the section titled "Performance Measures and Liquidated Damages."*

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	parts of the ICA and particularly for the forms of interconnection or particular UNEs for which there are not yet specific standards?	Attachment 2 Raw Material UNE §§ 5.3, 8.8 AT&T PM Rules and all references to performance standards and payments (AT&T Attachment 17)	adequately compensate CLECs for breaches by AT&T of ICA terms; instead AT&T uses them as a sword and regularly abuses the purpose and intent. Indeed, AT&T likely has committed massive fraud on the tribunal and has cheated both CLECs and the state out of massive amounts of funds that should have been paid. Nonetheless, UTEX is willing – in the interest of keeping the focus on interconnection and traffic exchange – to largely accept the PMs approved by the Commission in its various dockets, including Docket 28821. There are three important things to remember. First, AT&T is not proposing to use the T2A or T2A2 PMs or remedies. AT&T's proposed terms come from its generic, and are different. The Commission has not substantively reviewed these terms under § 252(c) or (e)(2)(B). Second, AT&T's PMs simply do not address interconnection or several UNEs like subloops or loops to a NID on a pole. AT&T has already made it quite clear that it thinks it can breach the ICA with absolute impunity when the PMs do not provide an express remedy for a specific topic. That is simply wrong. UTEX has proposed Liquidated Damages for those areas where PMs – whether AT&T's or "T2A" – do not have a measurement and remedy. Those targeted provisions should be approved. Third, This case should stay on focus: the interconnection, intercarrier compensation and signaling, routing and rating of traffic to and from UTEX's non-carrier customers - matters that have never before been addressed in Texas. AT&T's decision to demand use of its generic terms for all other matters is patently designed to	AT&T and the CLEC community at the direction of the PUC. The parties agreed to all but four issues which were brought to the PUC for resolution. UTEX has not proposed the provision of any UNEs that currently would not be incorporated in the AT&T proposed performance measurements. These measurements and the accompanying Stand Alone Remedy plan provide sufficient incentives not to breach "any and all parts of the ICA." The additional measurements and associated liquidated damages proposed by UTEX beyond those available under the AT&T Remedy Plan would be redundant, unreasonable and unjustified. Resolution of this issue does not assist in determining appropriate contract language and the determination of the contract language is more properly addressed in AT&T Issues: PM-1. PM-2.	

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			snarl up this case by injecting numerous issues that have already been previously litigated and disposed in the WCC case, the Alpheus arbitration and Docket 28821. UTEX has made every effort to eliminate all other issues so the Commission's attention can stay on the real issue, the one that it expressly said it would not address in Docket 28821, and the issue the FCC told it to resolve under current law. But AT&T has completely frustrated that effort by disputing the refresh. And then it will viscerally turn on the old language it demanded to see and spend inordinate time criticizing it. This is not good faith or any real attempt to resolve issues.		
UTEX 57	Do AT&T's proposed Performance Standards provide sufficient compensation to UTEX in the event of an AT&T breach of any parts of the ICA and particularly for the forms of interconnection or particular UNEs for which there are not yet specific standards?	See contract references for Issue 56.	See position statement for Issue 56.	Yes. The performance measurements and standards proposed by AT&T were developed collaboratively by AT&T and the CLEC community at the directions of the PUC. The parties agreed to all but four issues which were brought to the PUC for resolution. UTEX has not proposed the provision of any UNEs that currently would not be incorporated in the AT&T proposed performance measurements. These measurements and the accompanying Stand Alone Remedy plan provide sufficient incentives not to breach "any and all parts of the ICA." The additional measurements and associated liquidated damages proposed by UTEX beyond those available under the AT&T Remedy Plan would be redundant, unreasonable and unjustified. AT&T provides liquidated damages and PM for all UNEs required under Act. Resolution of this issue does not assist in determining appropriate contract language and	*This issue is addressed in the text of the Award in the section titled "Performance Measures and Liquidated Damages."*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
				the determination of the contract language is more properly addressed in AT&T Issues: PM-1. PM-2.	
UTEX 58	Is it appropriate to have Liquidated Damages for the specific types of Interconnection methods proposed by UTEX, given that they are not addressed by AT&T's proposed Performance Standards?	See contract references for Issue 56	See position statement for Issue 56.	No. However, AT&T provides liquidated damages and performance measurements for all UNEs required under Act. The UNEs proposed by UTEX are covered in AT&T's proposed performance measurements and Stand Alone Remedy Plan. The additional measurements and associated liquidated damages proposed by UTEX beyond those available under the AT&T Remedy Plan would be both redundant and unjustified Resolution of this issue does not assist in determining appropriate contract language and the determination of the contract language is more properly addressed in AT&T Issues: PM-1. PM-2.	*This issue is addressed in the text of the Award in the section titled "Performance Measures and Liquidated Damages."*
UTEX 59	Is it appropriate to have Liquidated Damages for sub-loops and the attendant means to access them (e.g., SVS), given that they are not addressed by AT&T's proposed Performance Standards?	See contract references for Issue 56	See position statement for Issue 56.	AT&T does provide liquidated damages and performance measurements for subloops. AT&T provides liquidated damages and performance measurements for all UNEs required under Act. The UNEs proposed by UTEX are covered in AT&T's proposed performance measurements and Stand Alone Remedy Plan due indeed include subloop measurements. The additional measurements and associated liquidated damages proposed by UTEX beyond those available under the AT&T Remedy Plan would be redundant, unreasonable and unjustified. Resolution of this issue does not assist in determining appropriate contract language and the determination of the contract	*This issue is addressed in the text of the Award in the section titled "Performance Measures and Liquidated Damages."*

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				language is more properly addressed in AT&T Issues: PM-1. PM-2.	
UTEX 60	Is it appropriate to have Liquidated Damages for loops that run to a NID on a pole and the attendant means to access them, given that they are not addressed by AT&T's proposed Performance Standards?	See contract references for Issue 56	See position statement for Issue 56. This issue is not moot as a result of Order 30. UTEX's 2005 UNE terms, which are now back in play, also provided for loops and subloops that run to a NID on a pole. And, the 2005 Liquidated Damages terms – which are also now back in play – address them.	AT&T provides liquidated damages and performance measurements for all UNEs required under Act. The UNEs proposed by UTEX are covered in AT&T's proposed performance measurements and Stand Alone Remedy Plan due indeed include subloop measurements. The additional measurements and associated liquidated damages proposed by UTEX beyond those available under the AT&T Remedy Plan would be both redundant, unreasonable and unjustified Resolution of this issue does not assist in determining appropriate contract language and the determination of the contract language is more properly addressed in AT&T Issues: PM-1. PM-2. .	*This issue is addressed in the text of the Award in the section titled "Performance Measures and Liquidated Damages."*
AT&T generic					
UTEX 61	Can UTEX be reasonably required to arbitrate large portions of AT&T's "generic" agreement, even when the results and terms, prices and conditions are different from and contrary to the results, terms, conditions and	AT&T contract terms opposed by UTEX that are sourced from AT&T's "generic" terms available at https://clec.att.com/clec/shell.cfm?section=115	AT&T has proposed in several places to use its "generic" terms rather than terms flowing form 28821. The Commission has not substantively reviewed these terms under § 252(c) or (e)(2)(B). This case should stay on focus: the interconnection, intercarrier compensation and signaling, routing and rating of traffic to and from UTEX's non-carrier customers - matters that have never before been addressed in Texas. AT&T's decision to demand use of its generic terms for all other matters is patently designed to snarl up this case by injecting numerous issues that have already been previously litigated and disposed in the WCC case, the Alpheus arbitration and Docket 28821. UTEX is making	AT&T is not proposing the entirety of its generic as UTEX asserts. AT&T's proposed terms and conditions are specific to UTEX and fully consistent with the FTA and PUC decisions implementing the FTA. AT&T's language filed 2/5/10 and revised 3/19/10 reflects an update to the baseline agreement being negotiated between the parties in 2005 (from UTEX's Second Amended Petition 2/17/05, AT&T's Response 3/14/05), as ordered by the PUC. AT&T has agreed to remove non-Texas terms from the agreement. See also answer to Issue 50.	*The Arbitrators conclude that a party to an arbitration under FTA § 252 may request that the Commission resolve any open issues between the parties. FTA § 252(b)(1)-(3).*

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	prices that have recently been expressly arbitrated by PUC?		every effort to eliminate all other issues so the Commission's attention can stay on the real issue, the one that it expressly said it would not address in Docket 28821, and the issue the FCC told it to resolve under current law. AT&T is not contending there are changed circumstances, additional facts, new law or considerations that were not previously presented to or considered by the Commission in those recent arbitrations. Further, AT&T's generic terms address and resolve matters that are not within the scope of the open issues presented in the petition and response.		
UTEX 62	Can UTEX be required to arbitrate terms, prices and conditions appearing in AT&T's generic terms that address and resolve any issue other than the "open issues?"	See contract references for Issue 61	See position statement for Issue 61.	AT&T is not seeking to arbitrate issues other than those subject to Section 252 of the Act.	*The Arbitrators conclude that AT&T Texas's generic terms may properly be considered in this arbitration. FTA § 252(b)(4)(C) states that a state commission "shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) of this section upon the parties to the agreement." UTEX has not established that AT&T Texas's generic terms are unrelated to issues raised by the parties in their petition and response.*
UTEX 63-64	WITHDRAWN				
Duty to negotiate in good faith					
UTEX 65	Has UTEX proven that AT&T intentionally obstructed or delayed negotiations or	GTC Whereas clauses 3-6, all references to applicability, §§ Entire Agreement	The evidence will show and UTEX will therefore prove that AT&T has intentionally obstructed or delayed negotiations or resolutions of disputes as contemplated by FCC Rule 51.301(c)(6).	No. AT&T disagrees with the insinuations of this issue statement and believes they serve no useful purpose in resolving the open issues between the parties.	*This issue is addressed in the text of the Award in the section titled "Duty to Negotiate in Good Faith."*

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	resolutions of disputes as contemplated by FCC Rule 51.301(c)(6)?				
UTEX 66	Has UTEX proven that AT&T refused throughout the negotiation process to designate a representative with authority to make binding representations, and that such refusal significantly delayed resolution of issues as contemplated by FCC Rule 51.301(c)(7)?	Entire Agreement	The evidence will show that AT&T refused throughout the negotiation process to designate a representative with authority to make binding representations, and that such refusal significantly delayed resolution of issues as contemplated by FCC Rule 51.301(c)(7)	No. See answer to Issue 65.	*This issue is addressed in the text of the Award in the section titled "Duty to Negotiate in Good Faith."*
UTEX 67	Has UTEX proven that AT&T refused to provide information necessary to reach agreement by refusing to furnish information about its network UTEX reasonably required to	Entire Agreement	The evidence will show, and UTEX will therefore prove that AT&T refused to provide information necessary to reach agreement by refusing to furnish information about its network UTEX reasonably required to identify the network elements that it needs in order to serve a particular customer as contemplated by FCC Rule 51.301(c)(8)(i).	No. See answer to Issue 65.	*This issue is addressed in the text of the Award in the section titled "Duty to Negotiate in Good Faith."*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
	identify the network elements that it needs in order to serve a particular customer as contemplated by FCC Rule 51.301(c)(8)(i)?				
UTEX 68	Has UTEX proven that AT&T refused to provide information necessary to reach agreement by refusing to furnish cost data that are relevant to setting rates as contemplated by FCC Rule 51.301(c)(8)(ii)?	Entire Agreement	The evidence will show and UTEX will therefore prove that AT&T refused to provide information necessary to reach agreement by refusing to furnish cost data that are relevant to setting rates as contemplated by FCC Rule 51.301(c)(8)(ii).	No. See answer to Issue 65.	*This issue is addressed in the text of the Award in the section titled "Duty to Negotiate in Good Faith."*
UTEX 69	Has UTEX proven that AT&T engaged in any other action or practice that violated its duty to negotiate in good faith aside from those matters specifically listed in FCC Rule 51.301?	Entire Agreement	The evidence will show and UTEX will therefore prove that that AT&T engaged in other actions or practices that violated its duty to negotiate in good faith aside from those matters specifically listed in FCC Rule 51.301.	No. See answer to Issue 65.	*This issue is addressed in the text of the Award in the section titled "Duty to Negotiate in Good Faith."*

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UTEX 70	Did AT&T violate its §§ 251(c)(1) and 252(b)(5) duty to negotiate in good faith the terms and conditions of an agreement to fulfill the duties established by sections 251 (b) and (c) of the Act?	Entire Agreement	The evidence will show that AT&T violated its §§ 251(c)(1) and 252(b)(5) duty to negotiate in good faith the terms and conditions of an agreement to fulfill the duties established by sections 251 (b) and (c) of the Act.	No. See answer to Issue 65.	*This issue is addressed in the text of the Award in the section titled "Duty to Negotiate in Good Faith."*
UTEX 71	If AT&T did violate its §§ 251(c)(1) and 252(b)(5) duty to negotiate in good faith, what remedies are available to UTEX?	Entire Agreement	AT&T should suffer adverse decisions on its substantive proposals on account of its violations. Its strategic choices made the conduct of this case extraordinarily difficult, time consuming and it wasted UTEX's time and the Commission's time. Further the Commission should investigate whether AT&T should suffer administrative penalties using the processes set out in PURA and the Commission's rules.	AT&T did not violate its duty to negotiate in good faith, so no remedies need to be considered	*This issue is addressed in the text of the Award in the section titled "Duty to Negotiate in Good Faith."*
Part 2: AT&T/UTEX DPL					
AT&T Global 1&2	WITHDRAWN				
AT&T GTC Issue 1	Which party's organizational structure is appropriate for the GTCs of the agreement?	GTC Entire document	UTEX has not changed the organization from that which appears in the current agreement. AT&T is the one trying to change grouping and sequencing.	AT&T's structure provides more appropriate and logical grouping and sequencing of topics, providing for efficient administration and interpretation, and following years of established practice. AT&T's structure also tracks the format and organization of UTEX's current agreement, which is the baseline the Arbitrators ordered the parties to use.	*Neither party clearly identified the parties' disagreements regarding the organizational structure of the ICA. The Arbitrators find that the organizational structure of the Docket No. 28821 CLEC Coalition ICA is logical and efficient. Therefore, to the extent the parties cannot agree regarding the organizational structure during the conforming process, the*

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					Arbitrators direct them to follow the organizational structure of the CLEC Coalition ICA.
AT&T GTC Issue 2	Should AT&T's or UTEX's proposed recitals be adopted as an accurate reflection of the Parties' intent, an accurate reflection of the current state of the law, and an aid to the interpretation of the agreement?	GTC Whereas Section	UTEX's proposed recitals do clarify any potential ambiguities because it does accurately reflect the parties' intent and clarify the reasons for the agreement. We do not believe AT&T's intent is clearly explained by their proposed language. *UTEX stated that AT&T Texas's recitals are false as to UTEX's intended service offerings. UTEX Initial Br. at 140.*	AT&T's language should be used. Recitals are interpretative aids to clarify ambiguities in a contract. Therefore, they must accurately reflect the parties' intent and clarify the reasons for the agreement. AT&T's language does this. UTEX opposed AT&T's final four proposed recitals. Although UTEX represented that it would submit alternative recitals, UTEX never did so and never presented any detailed explanation for its opposition. AT&T opposes UTEX's proposed recital, which references a preexisting/expired agreement. There is no discernible purpose or relevance to this agreement, which expired some ten (10) years ago and which, pursuant to the agreed upon integration-clause between the parties, was long ago superseded. *AT&T Texas stated that UTEX's recitals regarding the Waller Creek ICA are not relevant and that UTEX's other recitals are improper advocacy pieces. AT&T Texas Initial Br. at 113.*	*The Arbitrators conclude that UTEX's proposed recitals should not be included. UTEX's recitals regarding the Waller Creek ICA are not relevant to the new ICA at issue here. UTEX's remaining recitals are statements of UTEX's positions on several issues, which are not appropriate for the recitals section of an ICA. Rather, the recitals in an ICA should be broad statements regarding the background and purpose of the ICA.* *The Arbitrators also conclude that AT&T Texas's first two recitals should not be included. UTEX stated that those recitals do not accurately describe its business, and the Arbitrators find that these recitals are not necessary.* *The Arbitrators conclude that the undisputed recitals and AT&T Texas's last three recitals (which simply indicate that the ICA sets forth the parties' obligations, that UTEX will operate in the territory in which AT&T Texas operates, that UTEX will operate as a CLEC under the Commission's authority, and that UTEX wishes to enter into the ICA) should be included in the ICA. These recitals are reasonable and provide useful information regarding the background and purpose of the ICA.*
AT&T GTC Issue 3	Should UTEX's language regarding applicability of various statutory	GTC UTEX § 1.1.1	AT&T's proposed terms also mention statutory provisions. The problem is that they intentionally confuse when certain provisions interrelate and when they do not apply at all to an individual provision. UTEX's proposed terms	No. UTEX's newly proposed language is unnecessary and too restrictive and should therefore be rejected. By their very nature, GTCs apply to the entire agreement, limited only by the natural consequence of being pertinent or	*The Arbitrators conclude that UTEX's provisions limiting the applicability of various GTC provisions should not be included in the ICA. UTEX's proposed limitations are confusing and inappropriate for the GTC section*

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	provisions and their inter-relationships be included in the agreement?		make clear what applies and what does not apply.	not to other specific provisions. UTEX's attempt to parse applicability of the GTCs to specific attachments and appendices is confusing and inappropriate.	*of an ICA.*
AT&T GTC Issue 4	Should the agreement restrict UTEX's rights to unilaterally add, delete, relocate or modify resold services, UNEs or combinations?	GTC § 1.2	AT&T's complaint mischaracterizes the language. All it does is state that UTEX can discontinue, move, add change or move, and then restate what was confirmed in the *TRO* and *TRRO* that a UNE can be connected to other network elements.	Yes. AT&T rejects UTEX's proposed provision because the last sentence gives UTEX the right to unilaterally "add, delete, relocate or modify" resold services, UNEs and combinations. This language gives UTEX discretion to do anything it wishes to AT&T's network and is inconsistent with the efficient functioning of the PSTN and other obligations (such as network modifications and ordering procedures) in the network.	*The Arbitrators adopt the language approved by the Commission in Docket No. 28821 for the CLEC Joint Petitioners ICA. The Arbitrators find that the language as proposed by UTEX and AT&T Texas for §1.2 does not include the phrase "subject to the terms and conditions of the agreement" and the last sentence proposed by UTEX would make the section applicable to reciprocal compensation, Rights of way, Interconnection, Collocation, and ancillary functions despite the fact that the section addresses primarily unbundled network elements and resale services. The Arbitrators adopt the following language for § 1.2, which is consistent with the Commission's order in Docket No. 28821:* *"Subject to the terms and conditions of this Agreement, the Unbundled Network Elements, Combinations or Resale services provided pursuant to this Agreement may be connected to other Unbundled Network Elements, Combinations or Resale services provided by AT&T TEXAS or to any network components provided by CLEC itself or by any other vendor. Subject to the requirements of this Agreement, CLEC may at any time add, delete, relocate or modify the Resale services, Unbundled Network Elements or Combinations purchased hereunder."*

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AT&T GTC Issue 5	Should UTEX be allowed to enter AT&T's premises to perform work for itself?	GTC § 1.2.1	The Act expressly requires in § 251(c)(3) that "an incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.".AT&T has to provide UNEs in a way that allows UTEX to combine. AT&T seems to believe it can refuse to perform a combination and also refuse to let UTEX go in and perform that combination. If AT&T performs the combination then UTEX will not need to enter the property.	No. To maintain network security, AT&T must be able to control activity within its premises and ensure that only qualified personnel are in areas involving high risk. UTEX's language seeks to substantially alter security/safety practices that protect end users, CLECs, and AT&T. Recognizing these risks, the FCC has declined to require ILECs to grant CLECs direct access to ILEC-secured network space. UTEX's proposed language would inhibit protection of AT&T's and other physically and virtually collocated CLECs' networks, equipment, and end users. The PUC should reject UTEX's additional language.	*The Arbitrators find that in no case has an ICA approved by the Commission allowed a CLEC to perform work directly on AT&T Texas's or any other ILEC's facilities, and concurs with AT&T that such a provision would pose unacceptable risks for the ILEC. The Arbitrators further find that, should AT&T Texas refuse to perform an element combination provided for in the ICA, UTEX can seek relief through a post-interconnection dispute petition.*
AT&T GTC Issue 6	Should AT&T be able to discontinue providing services under the agreement as allowed by law and/or as authorized by the Agreement?	GTC UTEX § 1.3	The change of law terms adequately address what happens when a change of law occurs. UTEX's terms do not "freeze" anything when the law changes, or frustrate the process. Nor do they even remotely substitute an alternative unbundling analysis.	Yes. Various UNEs offered hereunder may be found (after FCC and judicial review) to be unnecessary under the FTA. AT&T's language accommodates these possible changes and provides an appropriate transition process to implement them. UTEX's proposal appears to "freeze" all UNEs in place or substitute an alternative unbundling analysis inconsistent with applicable law. UTEX's proposal must therefore be rejected.	*The Arbitrators find that the language as proposed by UTEX for § 1.3 does not include the qualifying phrase at the beginning of the section '"except as provided in this Agreement" and would allow UTEX, at its option, to replace discontinued functions with leased network elements. UTEX's proposed language is unclear as to whether UTEX expects to lease network elements at TELRIC prices. The Arbitrators note the FCC has declassified many network elements and AT&T Texas is no longer obliged to provide such network elements at TELRIC prices. The Arbitrators therefore do not adopt UTEX's proposed language for §1.3. Instead, the Arbitrators adopt the language approved by the Commission in Docket No. 28821 for the CJP ICA but replace references to SBC TEXAS with AT&T Texas* *"Except as provided in this Agreement,*

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					during the term of this Agreement, AT&T TEXAS will not discontinue, as to CLEC, any Unbundled Network Element, Combination, or Ancillary Functions offered to CLEC hereunder. During the term of this Agreement, AT&T Texas will not discontinue any Resale services or features offered to CLEC hereunder except as provided in this Agreement. This Section is not intended to impair AT&T TEXAS's ability to make changes in its Network, so long as such changes are consistent with the Act and do not result in the discontinuance of the offerings of Unbundled Network Elements, Combinations or Ancillary Functions made by AT&T TEXAS to CLEC as set forth in and during the term of this Agreement."
AT&T GTC Issue 7	Should UTEX's additional language regarding means to interconnect with AT&T Texas' affiliates be included in the agreement?	GTC AT&T § 1.3 UTEX § 1.4	As a general matter UTEX does not believe that either party should be able to use an affiliate to gain a regulatory advantage. Transit is part of interconnection. Further recent law has clarified that one party may not gain a regulatory advantage over the other and affiliate transactions such as moving subscribers to UVERSE and/or migrating them to a CMRS provider can not afford AT&T with a regulatory advantage. Likewise, UTEX's affiliates may not gain a regulatory advantage via traffic pumping.	No. UTEX's additional language goes beyond the scope of the immediately preceding text, and is vague and ambiguous.	*The Arbitrators conclude that the ICA between the parties addresses the terms of interconnection between UTEX and AT&T Texas. The interconnection arrangements between UTEX and AT&T Texas affiliates are outside the scope of this ICA. However, UTEX is free to negotiate interconnection arrangements with AT&T Texas affiliates to establish direct interconnection with these affiliates. Therefore, the Arbitrators adopt UTEX's proposed language in the second sentence of its § 1.4 (also AT&T § 1.3) with modifications:* *UTEX retains the right to directly interconnect with an AT&T affiliate by making separate ~~or otherwise make~~ arrangements with ~~and AT&T~~*

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					such affiliate. *UTEX's proposed language in the last sentence of its §1.4 (also AT&T § 1.3) appears to relate to the issue of transit service. This issue is addressed in Attachment 6 to NIM: Intercarrier Compensation under DPL Issue AT&T NIM 6-9. The Arbitrators find it unnecessary to address transit service by either party in the General Terms and Conditions and, therefore, do not adopt UTEX's proposed language.*
AT&T GTC Issue 8	Should AT&T be obligated to provide services to UTEX where UTEX is not operating and offering service to End Users or in those identified areas where AT&T Texas is not the ILEC?	GTC AT&T §§ 1.5, 1.6 UTEX § 1.6	UTEX does not understand AT&T's concerns. UTEX's terms expressly limit AT&T's § 251(c) obligations to places where it is the incumbent. The parties have a major difference over the proper definition and application of "end user" which will be addressed in other places. Further UTEX has focused on clearly defining both parties' network element responsibilities with respect to the mutual exchange of traffic via its proposed detailed call flow diagrams which clarify and explain the use of all network elements, be they signaling, or trunking, as well as the reciprocal payment for use based on traffic flow. We respectfully request that AT&T engage by specifically stating what "services" and or element use is not being provided in a reciprocal fashion.	No. The obligations under the agreement should extend only to those areas in which AT&T Texas operates as the ILEC (consistent with §§ 251 and 252) and in those areas in which UTEX is actually offering services to "End Users". (Some exceptions pertain to the provisioning and use of certain UNES; these are more fully discussed in the UNE attachment).	*The Arbitrators conclude that AT&T Texas's obligations under the ICA are limited to the areas where AT&T Texas operates as the ILEC. Furthermore, the Arbitrators conclude that the ICA allows UTEX to interconnect with AT&T Texas for the transmission and routing of telephone exchange service and exchange access consistent with the FTA §251. The Arbitrators note that AT&T Texas's proposed language limiting AT&T Texas's obligations to its serving areas where the CLEC serves End Users does not appear in other ICAs (e.g., CLEC Joint Petitioners ICA) and would be inconsistent with the FCC's decision in the Time Warner decision that a telecommunications carrier has a right to interconnect under §251 regardless of whether the telecommunications services provided by such carrier are wholesale or retail. (In the Matter of Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications*

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					Services to VoIP Providers, WC 06-55, DA 07-79, Memorandum Opinion and Order ¶ 14, FCC Rcd. 3513 (rel. Mar. 1, 2007)). The Arbitrators find that irrespective of whether UTEX serves retail end users, AT&T Texas must perform its obligations under the ICA throughout its entire service territory in Texas. On the other hand, the Arbitrators do not adopt UTEX's proposed language because it could be interpreted to extend AT&T Texas's obligations outside its ILEC service areas. Therefore, the Arbitrators adopt the following language: "Unless otherwise provided in the Agreement, AT&T Texas will perform all of its obligations under this Agreement throughout the entire service area in Texas where AT&T Texas is the incumbent local exchange carrier."
AT&T GTC Issue 9	Should UTEX and its affiliates be required to enter into ICAs with AT&T that contain like terms and conditions that UTEX has with AT&T in this ICA?	GTC AT&T § 2.1	AT&T's proposed terms are obviously unbalanced: all of UTEX's affiliates are bound but none of AT&T's affiliates are bound. UTEX does not have any CLEC affiliates. It does have a CMRS affiliate. UTEX strongly suspects AT&T would actually oppose UTEX's CMRS affiliate having the same terms as apply to the ICA with UTEX. UTEX has an ESP affiliate. UTEX suspects AT&T would oppose that affiliate having the same terms, particularly since that affiliate is not a carrier and certainly not a "requesting carrier." UTEX's language ensures that neither side may gain a regulatory advantage for themselves or for their affiliates.	Yes. All agreements between AT&T and UTEX and UTEX affiliates should contain the same or substantially the same terms and conditions. This keeps CLECs and their affiliates from picking and choosing between ICAs to obtain the most favorable terms and conditions from each. Without this language, some CLECs with affiliates would have a discriminatory advantage over other CLECs. Further, the language prevents disputes from arising when a CLEC and its affiliates attempt to operate under two separate ICAs. (See also GTC Issue 24). This provision also makes clear that the ICA applies only to AT&T and not to any of its affiliates. §§ 251 and 252 obligations do not apply to ILECs' affiliates that offer non-telecommunications	*The Arbitrators conclude that AT&T Texas's proposed language should not be included in the agreement because the language is not reciprocal and would bind persons that are not parties to this arbitration.*

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				services. Moreover, certain of AT&T's affiliates are structurally separate, and AT&T cannot negotiate on their behalf.	
AT&T GTC Issue 10	Should the Agreement provide a reasonable implementation period after approval?	GTC AT&T § 3.1 UTEX § 2.1	AT&T will be able to update its databases – to the extent it is required – while the agreement is before the Commission for approval.	Yes. As a practical matter, AT&T requires a 10 calendar day period to update its databases with UTEX's information required for order placement and billing. A ten day period after approval is reasonable.	*The Arbitrators conclude that AT&T Texas's proposed language should be included in the ICA because 10 calendar days is a reasonable period for AT&T Texas to update its databases.*
AT&T GTC Issue 11	AT&T Issue: Is it reasonable to have an agreement with a three-year term? UTEX Issue: Is it reasonable to have an agreement with a ten-year term?	GTC AT&T § 6.1 UTEX § 4.1	Assuming that the only issue is length of tern, UTEX requests 10 years which is approximately the amount of time it will take to obtain a successor agreement to our current agreement. 10 years is reasonable considering AT&T uses the process of obtaining agreements as an anti-competitive tool.	A three-year term is reasonable. Given the rate of change in the telecommunications industry, the regular review of industry standards and regulations applicable to the participants, and the issues that arise from new technologies, a three year term is reasonable and a ten-year term is not.	*The Arbitrators conclude that paragraph 2.2 from the GTC section of the Docket No. 28821 CJP ICA should be included in the ICA, but that the term should be three years. A three-year term is reasonable given the rate of change in the industry. Furthermore, use of the CJP ICA language is consistent with the Arbitrators' conclusions regarding the other DPL issues addressing term and termination.*
AT&T GTC Issue 12	Should the agreement allow a Party the right to terminate upon a	GTC AT&T § 7.2	Given the role of the parties "hornbook" law is not appropriate. AT&T does not want to have any agreement and this is all happening only because it is compelled. A right to "terminate"	Yes. The ability to terminate a contract upon the material breach by the other party is hornbook contract law. There is no reason why an agreement should continue after a material	*The Arbitrators conclude that AT&T Texas's proposed language should be included in the ICA. That language was approved by the Commission in the Docket No. 28821 CJP ICA,*

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	material breach by the other Party?		by UTEX if AT&T breaches is meaningless and of little value. AT&T would love to have the contract terminated. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 148.*	breach. AT&T's proposal for a 45-day notice and cure provision is reasonable.	*commonly appears in commercial agreements, and provides a reasonable remedy for the non-breaching party. Furthermore, use of the CJP ICA language is consistent with the Arbitrators' conclusions regarding the other DPL issues addressing term and termination.*
AT&T GTC Issue 13	What are the appropriate terms and conditions to be applied at the expiration of the initial term of the agreement?	GTC AT&T §§ 7.3, 7.4-7.9 UTEX §§ 4.2, 4.3	UTEX has not proposed to materially change the provisions in issue. All it did was replace:"CLEC" with "UTEX" and spell out the full name of the FCC and then insert the applicability provision that appears on every other section. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 148.*	AT&T's proposed procedures after termination are reasonable and consistent with the FTA and should be adopted. AT&T has proposed a reasonable notice procedure by which the parties can manifest their intent to negotiate a successor agreement and, further, provides a process by which the current agreement can continue during negotiations. In addition, should the parties decide not to continue a contractual relationship, the agreement has a process for termination and identifies contractual duties that survive termination. By contrast, UTEX' proposal is remarkably undetailed and imposes an unreasonable duty upon AT&T to continue service after termination; imposes an arbitration requirement inconsistent with the FTA; and fails to identify surviving obligations—other than payment of services. UTEX's term and termination proposals should be rejected.	*The Arbitrators conclude that paragraphs 2.2.1, 2.2.1.1, 2.3, 2.4, and 2.7 from the GTC section of the CJP ICA should be included in the ICA. AT&T Texas's language contains language similar to the CJP ICA language but also includes unreasonable language in AT&T Texas paragraph 7.6 that could result in termination of the ICA during the pendency of an arbitration proceeding for a successor ICA. UTEX's language unreasonably requires continuation of service after termination of the agreement and lacks sufficient detail. Furthermore, use of the CJP ICA language is consistent with the Arbitrators' conclusions regarding the other DPL issues addressing term and termination.*
AT&T GTC Issue 14	Should AT&T's language regarding the parties' responsibilities for their end users be included in the agreement?	GTC AT&T §§ 4.1, 40.1.3	Once we have an agreed or prescribed definition of "end user" then this might be acceptable. UTEX's concern is that AT&T would insist that UTEX can serve "only" "end users" and then claim UTEX has none.	Yes. AT&T's language simply states that each party is responsible for the services provided to its end users.	*The Arbitrators conclude that AT&T Texas's proposed language should be included with the following modifications:* *"Each Party is solely responsible for all products and services it provides to its ~~End Users~~ Customers ~~and to other Telecommunications Carriers~~."*

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Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
					This language is a reasonable statement of the parties' respective responsibilities and will avoid issues regarding the classification as "end users" of persons served by UTEX.
AT&T GTC Issue 15	What are the appropriate provisions relating to insurance coverage to be maintained by the Parties?	GTC: AT&T §§ 40.3-40.11 UTEX §§37.2-37.2.3	AT&T is merely attempting to raise UTEX's costs in unreasonable fashion. AT&T has not explained how providing UNEs involves higher risk than when the same facilities are used as part of a resale arrangement. AT&T is proposing to more significantly change insurance requirements from the current terms. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 150.*	AT&T's language provides the appropriate level of insurance coverage for considering the increased risk inherent in provisioning UNEs. UTEX's coverage levels provide inadequate protection. AT&T also includes necessary terms relating to coverage of subcontractors; the rating(s) of policies carried; changes in coverage; self-insurance; etc. *AT&T Texas witness Ms. Pellerin states that AT&T Texas seeks higher insurance coverage for UNEs. Services utilizing UNEs are more risky because they are not entirely with AT&T Texas's control, involve collocation in AT&T Texas's buildings, and involve accessing and interconnecting the physical plant of both parties. AT&T Texas Ex. 21, Direct Testimony of Patricia H. Pellerin ("Pellerin Direct") at 17:12-18:2.* *Ms. Pellerin states that UTEX's proposed insurance levels provide inadequate coverage in the event of loss when one considers overall inflation, the rising cost of health care and labor, and the litigious nature of our society. Id. Ms. Pellerin also states that UTEX did not explain or provide competing language for AT&T Texas's proposed language addressing insurance for subcontractors and self-insurance. AT&T Texas Ex. 21, Pellerin Direct, at 18:3-7.*	*The Arbitrators conclude that AT&T Texas's proposed language should be included in the ICA because that language is reasonable and the Commission approved substantially similar language in the Docket No. 28821 CLEC Coalition ICA. Furthermore, UTEX did not submit evidence supporting its own terms nor did it rebut AT&T Texas's evidence.*
AT&T	Should the	GTC	AT&T already has UTEX's OCN, and it will	Yes. OCNs and AECNs are necessary for the	*The Arbitrators find that it is reasonable for*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
GTC Issue 16	agreement obligate UTEX to provide AT&T with its OCN/AECN at the time the agreement is executed?	AT&T § 4.2	not change. This proposed requirement is unnecessary and the inclusion of this issue is done solely to distract attention from the real issues.	provisioning of facilities based and resale orders. They are also necessary to build billing tables. AT&T must have them at the time an agreement is executed in order to implement the agreement. *It is a simple exercise for UTEX to provide its OCN/AECN on the signature page of the ICA. AT&T Texas may not already possess the OCN/AECN for a CLEC adopting UTEX's ICA, and such information is necessary. AT&T Texas Ex. 21, Pellerin Direct, at 19:5-9.*	*UTEX to provide AT&T Texas with its OCN/AECN at the time the ICA is executed. The Arbitrators, therefore, adopt AT&T Texas's proposed language.*
AT&T GTC Issue 17	Should AT&T's language regarding telephone number referral announcements be included in the agreement?	GTC AT&T § 4.3, 8.6	No. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 150.*	Yes. AT&T's language provides appropriate terms and conditions to accommodate end users' requests for telephone number referral announcements when they change telephone numbers.	*The Arbitrators conclude that paragraph 4.5 from the GTC section of the Docket No. 28821 CLEC Coalition ICA should be included in the ICA. That paragraph contains the language proposed by AT&T Texas here but also includes one additional sentence regarding responsibility for furnishing referral announcement service, which the Arbitrators find reasonable. The Arbitrators also note that, while UTEX stated it would accept the terms from the Docket No. 28821 CJP ICA on this issue, no such terms appear in that ICA.*
AT&T GTC Issue 18	Should the Agreement contain terms and conditions requiring the Parties to notify each other when Labor disputes arise that threaten the Parties' performance under the agreement?	GTC AT&T §§ 4.4, 8.7	UTEX does not have labor disputes because it treats its workers fairly and pays reasonable wages. The force majeure clause adequately serves. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 150-51.*	Yes. Each Party should notify the other Party of a Labor Dispute that threatens their ability to perform under this Agreement and make efforts to minimize the impairment of service to the other Party. This proposal is entirely reasonable and common in the commercial context.	*The Arbitrators conclude that AT&T Texas's proposed language should not be included in the ICA. The force majeure clause adequately addresses the parties' obligations resulting from a labor dispute.*
AT&T	Should the ICA	GTC	UTEX's GTC § 5.1 does this.	Yes. Such a provision is entirely reasonable and	*The Arbitrators conclude that AT&T Texas's*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
GTC Issue 19	contain language stating that neither Party will unreasonably withhold consent if requested from the other Party?	AT&T § 8.8	*UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 151.*	common in the business contracts.	*proposed language should be included in the ICA. The language is reasonable, and UTEX has not explained why it should not be adopted. UTEX's proposed language does not comprehensively address this issue because it applies only to assignment of the ICA, whereas AT&T Texas's language applies to all instances in which consent is required.*
AT&T GTC Issue 20	Should UTEX's use of AT&T's OSS be limited to activities related to services provided for in the agreement?	GTC AT&T § 4.5, 8.9	Many of the duties and responsibilities covered by the agreement are not "services." Interconnection is not a service. UNEs are not a service. A normal person would consider it odd and unfair that AT&T would first demand that UTEX exclusively use AT&T's OSS and then try to restrict that use.	Yes. The agreement contains terms and conditions for UTEX's use of AT&T's OSS, and that use should be restricted to services provided for in the agreement. Any other use would be inappropriate.	*This issue is addressed in the text of the Award in the section titled "OSS and Ordering."*
AT&T GTC Issue 21	Should the agreement contain provisions regarding services in the agreement that are missing prices?	GTC AT&T § 4.6, 8.10	AT&T's terms provide that if there is no price then there is no duty to perform. While a mechanism to develop missing prices is reasonable, AT&T must be required to provision pending that development. Otherwise it will be able to deny access until the regulatory wheels quit grinding. UTEX, for example has had DS3 loop terms in its current agreement (10 years old) but could never get a DS3 because there is no price. The PUC twice refused to set one. UTEX tried to "negotiate" a price with AT&T that would employ the PUC's most recent UNE rate for DS3s and AT&T flatly refused to use that price. They claimed UTEX would have to "adopt" another agreement – in its entirety – that had a price. Requiring previous agreement before provisioning merely means AT&T can and will arbitrarily refuse to negotiate unless it entirely has its own way. That is not negotiation and is wholly unfair.	Yes. AT&T's language provides a mechanism for the parties to handle services for which prices were inadvertently omitted from the agreement. It is entirely reasonable for AT&T and UTEX to agree upon the applicable price before any service is to be offered.	*The Arbitrators conclude that AT&T Texas's proposed language should be included in the ICA with the following modifications:* *"The Parties acknowledge and agree that they do not intend to include products and services in this Agreement that do not have corresponding rates and charges. Accordingly, if this Agreement is executed and/or approved by the Commission and the Parties later discover that a product or service is included in this Agreement without an associated rate or charge, the Parties agree that they will agree upon a rate or charge to include in this Agreement before the product or service is provided or performed. However, if the Commission has previously approved a rate or charge for the product or service in another ICA for AT&T Texas, then the parties shall use the most recent rate or charge approved by the Commission. If the Parties cannot agree to a rate or charge or if a party disputes the rate or*

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Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
					charge previously approved by the Commission, either Party may pursue dispute resolution under the applicable provisions of this Agreement." *AT&T Texas's language, as modified by the Arbitrators, is reasonable because it provides certainty to the parties regarding applicable rates or charges prior to the provision or performance of a product or service. Use of the most recent rate or charge approved by the Commission in another ICA for AT&T Texas is reasonable because it allows a party to request a product or service without requiring dispute resolution and because the cost for AT&T Texas to provide the product or service at any given time should not vary from CLEC to CLEC. Finally, the Arbitrators have approved appropriate dispute resolution procedures elsewhere in this award.*
AT&T GTC Issue 22	Should the GTCs address the parties' obligations with respect to transit service?	GTC AT&T § 8.11	The answer is yes. Both affiliated and unaffiliated transit issues should be addressed. UTEX proposes detailed call flow diagrams resolving these issues. Our rights related to transit can not be denied simply because AT&T does not want to address them.	No. Specific terms and conditions regarding the parties' obligations with respect to transit service are more appropriately addressed in the network interconnection and compensation attachments to the extent the agreement addresses transit service at all. See AT&T Issue NIM 6-9.	*The Arbitrators conclude that the obligations with respect to transit service are addressed in the network interconnection and intercarrier compensation attachments in the ICA, and therefore decline to include language regarding transit service in the General Terms and Conditions. The issue of whether call diagrams should be incorporated in the ICA is addressed under DPL Issues UTEX 31 and UTEX 33 above.*
AT&T GTC Issue 23	Should the Agreement limit MFN rights to those available under § 252 (i)?	GTC: UTEX §§ 31, 31.1	Any MFN provision should only cite to the statute and rule and not characterize them. The FCC may some day change its MFN rule but AT&T's terms would lock in the current rule.	Yes. UTEX is not entitled to obtain terms different than those in its agreement merely because AT&T has a different agreement with another carrier.	*The Arbitrators conclude that UTEX's proposed language should not be included in the ICA. UTEX has not cited any authority allowing it to adopt a new ICA prior to the expiration of an existing ICA. UTEX's rights to adopt another ICA are limited to those available under FTA §*

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					252(i).
AT&T GTC Issue 24	Should AT&T's Intervening Law provision, non-waiver provision, and process for incorporating changes of law be adopted?	GTC AT&T § 5.1 UTEX §§ 3.1, 3.2	The PUC found the current terms reasonable and lawful in the first arbitrations after the Act was passed. AT&T has not explained why they need to be changed or why this issue should be relitigated. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 155.*	Yes. UTEX's proposed intervening law language is too narrow. Under this language, a carrier might argue that the intervening law clause can only be invoked by a party if any laws or regulations that were a basis for a contract provision are invalidated, modified or stayed and in such case, only if the action of the legislative body, court or regulatory agency specifically <u>requires</u> the contract provision be invalidated, modified or stayed. Such an event is rare. FCC Orders may modify provisions in a contract but they rarely, if ever, would state what provisions in a contract are required to be modified. For these reasons, UTEX's proposed language is too narrow. AT&T's proposed language ensures that no carrier delays or prolongs negotiations for any needed modifications to the contract as a result of such action in order to delay the application of the intervening law event to the contract. Any intervening law event should impact the contract as of the effective date of such intervening law event, irrespective of how long it takes the parties to negotiate (and if necessary, submit for dispute resolution) the appropriate modifications to the contract as a result of any change in law event. In addition, AT&T's proposed language makes clear that it is not waiving any legal rights in entering into the Agreement, but instead, is reserving any rights it may have. AT&T is willing to make such language reciprocal. *AT&T Texas witness Ms. Pellerin states that the Commission in Docket No. 28821 rejected language almost identical to that proposed by*	*The Arbitrators conclude that paragraph 5.1 from the Docket No. 28821 CJP ICA should be included in the ICA. The Commission has previously approved an ICA with this language, and AT&T Texas's language contains significant differences from that language. For example, AT&T Texas's language includes provisions regarding UNEs and ISP-bound traffic, which the Arbitrators find unnecessary.*

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				UTEX here and adopted language that is substantially similar to AT&T Texas's proposed language. AT&T Texas Ex. 21, Pellerin Direct, at 24:18-21.	
AT&T GTC Issue 25	What are the appropriate terms and conditions regarding restrictions on assignment of the agreement?	GTC AT&T § 8.1.1, 8.1.2 UTEX § 5.1	The PUC found the current terms reasonable and lawful in the first arbitrations after the Act was passed. AT&T has not explained why they need to be changed or why this issue should be relitigated. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 155.*	AT&T should have the right to protect insure that the assignee or transferee is in a position to assume and pay any liabilities associated with the contract. Assignment to an affiliate with an existing agreement should not be permitted because it would improperly permit the affiliate to escape the terms of its binding contract. UTEX can create affiliates at will, which makes its proposed proviso excepting affiliates unworkable and would render the clause useless. (See also GTC Issue 9). AT&T has not been engaged in the assignment of agreements, therefore the provision should not be reciprocal.	*The Arbitrators conclude that paragraphs 5.1 and 5.2 from the GTC section of the Docket No. 28821 CLEC Coalition ICA should be included in the ICA. This language is identical to the CJP ICA language except that it requires the CLEC to provide AT&T Texas with 60 days' prior notice of an assignment rather than 30 days, as required by the CJP ICA. The Arbitrators find that 60 days' notice of an assignment is more reasonable than 30 days' notice. The language adopted by the Arbitrators allows AT&T Texas to determine the assignee's ability to pay for the services provided. Furthermore, the language adopted by the Arbitrators prohibits assignment to an affiliate with an existing ICA. Finally, AT&T Texas's proposed language is unreasonable because it prohibits UTEX from assigning the ICA to a third party without the prior written consent of AT&T Texas.*
AT&T GTC Issue 26	Should UTEX be responsible for the cost of changing its records in AT&T's systems if UTEX assigns or transfers its agreement?	GTC AT&T §§ 8.2, 8.3	Will AT&T pay UTEX if UTEX has to change its records on account of AT&T assignment or transfer? Any requirement must be reciprocal. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 155.*	Yes. As the PUC found in Docket 28821 GTC Issue 23, the cost associated with any changes that UTEX makes to its OCN, ACNA, or other company identifier should be born by UTEX as a cost of doing business.	*The Arbitrators conclude that AT&T Texas's proposed language should be included in the ICA. It is reasonable to require UTEX to bear the cost of changes to AT&T Texas's systems resulting from UTEX's assignment or transfer of the ICA. Furthermore, the Commission found in Docket No. 28821 that the CLEC should bear such costs. (Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement, Docket No. 28821, Arbitration Award – Track 1 Issues, GTC – Jt. DPL – Final, SBC Issue 23 at 14 (February 22,*

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					2005)). The Arbitrators note that, while the Docket No. 28821 CLEC Coalition ICA contains language identical to that proposed by AT&T Texas here, the CJP ICA does not appear to address this issue.
AT&T GTC Issue 27	Should the agreement include terms for CLEC to CLEC mass migrations and project coordination?	GTC AT&T §§ 8.4, 8.5	UTEX's business model does not include anything that would involve mass migrations of legacy POTS end users. The provision is not necessary. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 155.*	Yes. The agreement should set forth the parties' respective responsibilities regarding CLEC to CLEC mass migrations and project coordination that result from assignment of the agreement. Absent such terms, CLEC to CLEC transfers may result in avoidable service interruptions.	*The Arbitrators conclude that AT&T Texas's language should be included in the ICA because the language is reasonable. While UTEX may not provide services that could trigger this provision today, it may offer those services in the future or another CLEC that provides such services may opt into this agreement. The Arbitrators also note that, while the Docket No. 28821 CLEC Coalition ICA contains language addressing this issue, the CJP ICA does not appear to have relevant language.*
AT&T GTC Issue 28	Should the agreement permit release of confidential information that is indistinguishable from other carriers' data to regulatory bodies?	GTC AT&T § 9.1-9.2.7 UTEX § 6.1-6.9	No. UTEX's information is UTEX's information. If AT&T wants or needs to provide that information to any body then it can seek UTEX's consent. UTEX observes that AT&T has changed the Issue Statement, and the issue. The Arbitrators should remember that when AT&T gripes after UTEX adds some of the 2005 DPL Issues as a result of Order 30. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 155-56.*	AT&T's language limiting confidential treatment to appropriately designated Proprietary Information and to limit the use of confidential information to that permissible under Section 222 of the Act is both reasonable and workable. In the event a regulatory or judicial body requires data from a party, and the data is so commingled with another carrier(s)' data that the underlying confidential information could not be discerned, the confidentiality provisions should not apply because no confidential information would be revealed. *AT&T Texas witness Ms. Pellerin states that AT&T Texas is willing to accept UTEX's proposed language with the addition of language set forth at page 27, lines 22-29 of her direct testimony. AT&T Texas Ex. 21, Pellerin Direct, at 27:18-29. Ms. Pellerin states that the*	*The Arbitrators conclude that UTEX's proposed language should be included in the ICA with two modifications. First, the language set forth at page 27, lines 22-29 of Ms. Pellerin's testimony should be added. That language is reasonable because it allows AT&T Texas to respond to information requests from governmental agencies but allows disclosure of UTEX's information only if it "could not possibly reveal the underlying proprietary or confidential information." Second, the parties should add language to the ICA indicating that call record information is deemed to be confidential. UTEX did not object to this portion of Ms. Pellerin's testimony, and the language is reasonable.*

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				ICA should include this language to permit the release of confidential information that has been aggregated such that an individual CLEC's data cannot be discerned. AT&T Texas Ex. 21, Pellerin Direct, at 28:9-29:3. According to Ms. Pellerin, requests for such information from regulatory agencies are typical. Ms. Pellerin also states that call records should be deemed confidential and that this would protect the confidentiality of UTEX's data. AT&T Texas Ex. 21, Pellerin Direct, at 28:2-8.	
AT&T GTC Issue 29	Which Party's Limitations of Liability language should be incorporated into this Agreement?	GTC AT&T §§ 10.1.1, 10.1.3, 10.1.4, 10.5-10.9, 10.10.1 UTEX §§ 7.1.1, 7.2.1	UTEX's proposed terms came from another arbitrated agreement. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 156.*	AT&T's proposal should be approved. An appropriate limitation of liability should not exceed the costs of services to be rendered under the agreement. AT&T's UNE costs are developed with reference to such a reasonable limitation of liability. Moreover, UTEX's proposal for a liquidated damages provision is inappropriate for use in this agreement. While it is addressed elsewhere, it is AT&T's position that the PUC has no authority to incorporate liquidated damages provisions over the objections of one of the parties and that such provisions are both unreasonable and unjustified. UTEX's proposal to include a right to pursue "business torts" and/or antitrust claims and seek extra-agreement remedies stands directly contrary to the purpose of a limitation of liability provision and several judicial decisions (e.g., *Trinko* and *Covad v. Verizon*.) *AT&T Texas witness Ms. Pellerin states that the Commission arbitrated a similar dispute in Docket No. 28821 and adopted AT&T Texas's proposed language with one modification, which AT&T Texas has incorporated here. Ex. 21,*	*The Arbitrators conclude that paragraphs 7.1, 7.1.2, 7.2 and 7.2.1 from the GTC section of the Docket No. 28821 CLEC Coalition ICA should be included in the ICA. The Commission has already found that language to be reasonable, and the language includes the modification referred to by Ms. Pellerin. Neither party established that the CLEC Coalition language is insufficient or that the party's additional language is necessary.*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
				Pellerin Direct, at 29:23-25.	
AT&T GTC Issue 30	Which indemnity language should be included?	GTC AT&T: 11.3.1 UTEX: 7.3.1.1	UTEX is not proposing to materially change the current language other than to clarify and employ defined terms. But that does give rise – once again – to the parties' disputes over what an "end user" and "customer" is.	The limitation of liability provision should include "claims" not merely "losses", since the inclusion of the term is broader and more in keeping with the intent of the limitation of liability proposed.	*The Arbitrators conclude that AT&T Texas's proposed language should be included in the ICA except that the term "end user" should be replaced with the term "Customer." The Arbitrators agree with AT&T Texas that inclusion of the term "claims" properly captures the intent of the indemnification provision. And use of the term "Customer" will avoid issues regarding the classification as "end users" of persons served by UTEX.*
AT&T GTC Issue 31	Should the agreement contain restrictions on the use of licenses and other Intellectual Property?	GTC: AT&T §§ 11.3.2-11.3.3.3: UTEX §§ 7.3.2, 7.3.3. 7.3.4	UTEX is proposing to use the terms in the current agreement, which the PUC found to be reasonable in the first arbitration after the Act. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 156.*	Yes. AT&T's language provides sufficient and appropriate restrictions on the use of licenses and other intellectual property. UTEX's language is unnecessary.	*The Arbitrators conclude that AT&T Texas's proposed language should be included in the ICA because that language was approved by the Commission in the Docket No. 28821 CJP ICA and UTEX has stated that it does not oppose that language.*
AT&T GTC Issue 32	What are the appropriate terms and conditions for bill payment?	GTC AT&T §§ 12.1-12.3.2 UTEX §§ 8.1, 10.1	UTEX has proposed reasonable terms addressing bill payment. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 157.*	AT&T's language provides needed specificity, including payment terms, late payment charges, and the specific method for electronic funds transfer. AT&T's proposal to calculate late payment charges based on the lesser of its approved tariff rate and the rate allowed by law is reasonable. UTEX's language is inadequate.	*The Arbitrators conclude that AT&T Texas's proposed language should be included in the ICA because that language is substantially similar to language approved by the Commission in the Docket No. 28821 CLEC Coalition ICA. Furthermore, UTEX did not adequately explain why its language should be adopted.*
AT&T GTC Issue 33	Should the agreement include a specific process for billing disputes, including escrow provisions?	GTC: AT&T §§ 12.4-12.8.4; UTEX §§ 9.4.1-9.4.3, 10.2	UTEX's proposed 9.4.1 through 9.4.3 and 10.2 employ the same terms as the current agreement, with only the applicability language added at the end of each. AT&T has not explained by different language is necessary or appropriate.	Yes. AT&T's language establishes a clear and specific process for the parties to handle billing disputes. AT&T's language requiring UTEX to escrow billing amounts in dispute is consistent with the PUC's decision in Docket 28821 GTC Issue 34.	*The Arbitrators conclude that paragraphs 11.5-11.6 from the GTC section of the Docket No. 28821 CLEC Coalition ICA should be included in the ICA. UTEX's proposed language is unreasonable because it imposes asymmetrical obligations on the parties with respect to the escrow of disputed billing amounts. The Arbitrators note that, while UTEX states it has*

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Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
					proposed the same terms as the current ICA between the parties, that agreement imposes an escrow requirement upon both parties, not just upon AT&T Texas. AT&T Texas's proposed language is unreasonable because, in Docket No. 28821, the Commission explicitly rejected language proposed by AT&T Texas here that would impose requirements regarding the escrow agent. (Docket No. 28821, Arbitration Award – Track 1 Issues, GTC – Jt. DPL – Final, SBC Issue 34 at 21 (February 22, 2005)). Furthermore, the Docket No. 28821 CLEC Coalition ICA contains a reasonable exception to the escrow requirement for billed parties that have good credit history with the billing party. CLEC Coalition ICA, GTC ¶ 11.6. AT&T Texas's proposed language does not contain that exception.
AT&T GTC Issue 34	Is it reasonable to include specific terms and conditions for the exchange of billing message information?	GTC AT&T §§ 12.9-12.10	UTEX's terms adequately address this since any user that is served via an AT&T resold service will usually obtain only flat rated basic dial tone access and usage. UTEX does not believe any of this is really necessary, but if it is it should be in the resale attachment, not GTC. AT&T's language in 12.10 does not appear to be limited to "resale" service, but may be interpreted to apply to UTEX's facilities based service.	Yes. AT&T's language provides clear direction regarding how the parties will handle usage data and billing for UTEX's resale end users. *AT&T Texas witness Ms. Pellerin states that AT&T Texas would not oppose moving its proposed language to the resale attachment provided that AT&T Texas's definition of EMI be retained in the definitions section of the GTCs. AT&T Texas Ex. 21, Pellerin Direct, at 37:3-7.*	*The Arbitrators conclude that AT&T Texas's propose language should be included in the resale attachment. UTEX does not oppose AT&T Texas's language, and moving the language to the resale attachment clarifies that it does not apply to UTEX's facilities-based service. The Arbitrators also conclude that AT&T Texas's definition of EMI should remain in the definitions section of the GTCs. Including definitions in the definitions section reduces confusion, and UTEX does not appear to oppose keeping the definition there.*
AT&T GTC Issue 35	Should AT&T's procedures for disconnection for nonpayment be incorporated into the agreement?	GTC AT&T §§ 13.0-13.8.6.2	AT&T's language is claimed to be "substantially similar" to that ordered in 28821 GTC Issue 39. That means it is <u>different</u>. Use of different words implies a different intent and result. Since AT&T has refused to sit down and explain any of its	Yes. AT&T's language is necessary in light of the current financial climate and only applies to billed amounts UTEX does not dispute. The PUC previously ordered the inclusion of substantially similar language in Docket 28821 GTC Issue 39.	*The Arbitrators conclude that paragraphs 12.0-12.12 from the GTC section of the Docket No. 28821 CLEC Coalition ICA should be included in the ICA, with the addition of interconnection to the list of services to which the provisions apply. The Commission previously found the*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
			proposed language UTEX does not know why different words were used or what different results are intended. If this is addressed, then the exact words the PUC has approved should be used. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 157.*	*AT&T Texas witness Ms. Pellerin states that the only variation from Docket No. 28821 that could be considered meaningful is that AT&T Texas's proposed language includes interconnection in the list of billed services that may be subject to disconnection for nonpayment. AT&T Texas Ex. 21, Pellerin Direct, at 37:25-38:4. Ms. Pellerin states that it is appropriate that anything provided pursuant to the ICA be subject to disconnection for nonpayment. Id.*	*Docket No. 28821 language to be reasonable, and the addition of interconnection to the list of services is reasonable because AT&T Texas will provide that service under the ICA. Furthermore, UTEX did not oppose the Docket No. 28821 language, nor did it explain why the addition of interconnection to the list of services would be unreasonable.*
AT&T GTC Issue 36	Should the agreement, contain a reciprocal and specific limit for back billing and credit claims?	GTC AT&T §§ 13.9, 14.1.2	AT&T is the one that continually back-bills for things that occurred long ago. The Communications Act has a statutory limitations period. That will suffice. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 158.*	Yes. The law recognizes the concepts of waiver, estoppel, and laches requiring a party to promptly enforce its rights and not prejudice the other party by undue delay. AT&T's language addresses that concept, allowing for a reasonable time to raise disputes, to correct bills, and a period of repose once this reasonable time has expired.	*The Arbitrators conclude that AT&T Texas's proposed language should be included in the ICA. The Commission approved substantially similar language in Docket No. 28821, and the language provides a reasonable limitation on back billing and credit claims.*
AT&T GTC Issue 37	Should the agreement require the Parties to exhaust the dispute resolution process before initiating litigation?	GTC AT&T § 14.2.1 UTEX § 9.2.1	The PUC does not sit as a court in equity. Its jurisdiction and power is prescribed by law. Besides, AT&T is misconstruing UTEX's proposal. UTEX's terms merely make clear that there are some things the PUC simply cannot handle. If AT&T thinks UTEX has tried to go to court to resolve something more properly handled by the PUC it can invoke exclusive and/or primary jurisdiction. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 158.*	Yes. While the parties apparently agree upon the necessity of a dispute resolution process, UTEX proposes that the process exclude proceedings for equitable relief. AT&T opposes this broad exception: Almost any action can be recast as one for an injunction, and UTEX's "exception" threatens to swallow the "rule" requiring dispute resolution.	*The Arbitrators conclude that paragraph 11.2.1 from the GTC section of the Docket No. 28821 CLEC Coalition ICA should be included in the ICA. The injunction exception included in that language addresses UTEX's concern about being prevented from seeking judicial relief in cases where the Commission lacks jurisdiction to hear a claim. The Arbitrators do not agree with AT&T Texas that the injunction exception should be removed because the Commission approved such an exception in both the Docket No. 28821 CLEC Coalition ICA and CJP ICA. Furthermore, requiring a party to utilize the dispute resolution procedures of the ICA could unreasonably delay temporary injunctive relief*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
					sought by a party. The Arbitrators decline to adopt UTEX's proposed language because it is overbroad.
AT&T GTC Issue 38	Should the agreement contain AT&T's proposed process for conducting informal dispute resolution?	GTC AT&T §§ 14.3- 14.5.1 UTEX § 9.3.1	AT&T is proposing to change the current terms, but has not given any reason why this is necessary or appropriate. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 158.*	Yes. AT&T's language reflects a non-discriminatory informal dispute resolution process that has been able to resolve most disputes arising before further steps are necessary.	*The Arbitrators conclude that paragraph 11.3.1 from the Docket No. 28821 CLEC Coalition ICA should be included in the ICA. This language is similar to that proposed by UTEX but also requires written notice of a dispute, imposes a deadline for the other party to designate its representatives, and imposes a deadline for completion of the informal dispute resolution process, unless the parties agree otherwise. The Arbitrators conclude that these additional requirements provide the informal dispute resolution process with needed structure and impose an appropriate deadline after which a party may utilize formal dispute resolution procedures. The Arbitrators decline to adopt AT&T Texas's proposed language because the proposed Local Service Center process does not have a firm timeline and could result in unreasonable delay before a party may seek formal dispute resolution.*
AT&T GTC Issue 39	Should the agreement contain AT&T's proposed process for conducting formal dispute resolution?	GTC AT&T §§ 14.6-14.7.1 UTEX §§ 9.5.1-9.6.1, 10.3	UTEX's is proposing to keep the current terms for 9.5.1-9.6.1, and those terms include recourse to ADR. AT&T gives no reason why the current terms should be changed. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 159.*	Yes. AT&T's language reflects a non-discriminatory formal dispute resolution process that resolves most disputes before further steps are necessary. On occasion, certain disputes regarding amounts owed are incapable of resolution through the informal process. When these amounts are minor, the amount in dispute does not justify the expense of formal litigation. Therefore, requiring the parties to resort to the cheaper alternative of mandatory arbitration makes sense. AT&T's language regarding arbitration is more detailed and should be adopted.	*The Arbitrators conclude that UTEX's proposed paragraphs 9.5, 9.5.1, 9.5.2, 9.6, and 9.6.1 should be included in the ICA. The Commission approved substantially similar language in the Docket No. 28821 CLEC Coalition ICA. UTEX's proposed paragraph 10.3 is not appropriate, however, because that paragraph purports to limit the Commission's discretion as to whether an administrative penalty investigation should be commenced. Finally, AT&T Texas's proposed language is unreasonable because it requires arbitration of certain disputes and does not permit a party to*

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					seek resolution of those disputes in accordance with Commission rules.
AT&T GTC Issue 40	Which Party's audit requirements should be included in the Agreement?	GTC AT&T §§ 15-15.1.7 UTEX §§ 32-32.8	UTEX is proposing to keep the current terms in §§ 32-32.7. Section 32.8 applied only until a date certain, which has passed. UTEX deals with routing and recording in its Attachment NIM, which is where it belongs.	AT&T's language is necessary to ensure that the parties may audit each other's bills, including the records on which bills are based. UTEX's language does not provide AT&T adequate ability to ensure that UTEX is properly routing and recording calls.	*The Arbitrators conclude that paragraphs 35.1-35.4 and 35.8-35.9 from the GTC section of the Docket No. 28821 CLEC Coalition ICA should be included in the ICA with the following modification to paragraph 35.4:* *"Either Party may audit the other Party's books, records and documents more than once during any Contract Year if the audit pursuant to Section 35.1 found previously uncorrected net variances or errors in invoices in the other Party's favor with an aggregate value of at least five ~~two~~ percent (5%)~~(2%)~~ of the amounts payable by the Billed Party for Resale services, Network Elements, Combinations or usage based charges provided during the period covered by the audit."* *AT&T Texas states that its language is consistent with the Commission's decisions in Docket No. 28821, and the Arbitrators find that using the language already approved by the Commission in that docket is reasonable. The Arbitrators agree with AT&T Texas that 5% is a more reasonable threshold for allowing audits more frequently than once per year and have modified the CLEC Coalition ICA language accordingly. Finally, UTEX's proposal excludes important language regarding determination of Percent Local Usage, and includes provisions that are not reciprocal or reasonable, specifically, ¶ 32.7.*
AT&T GTC	What are the appropriate terms	GTC AT&T §§ 16-16.9	UTEX's terms provide for a deposit when needed and are reasonable. UTEX believes	AT&T's assurance of payment language permits AT&T to obtain reasonable security (cash	*The Arbitrators conclude that paragraphs 9.1-9.14 of the Docket No. 28821 CLEC Coalition*

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Issue 41	and conditions for providing assurance of payment?	UTEX §§ 10.4-10.6	that if it is ever finally allowed to operate its business rather than continually having to litigate with AT&T then there will be little, if any, that UTEX ever pays AT&T, and that will be offset by AT&T payments to UTEX for § 251(b)(5) traffic. Maybe AT&T is the one that should have to put up a deposit. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 159.*	deposit, letter of credit) in the event UTEX is or becomes credit impaired. UTEX's terms provide inadequate assurance against the risk of non-payment.	*ICA should be included in the ICA because the Commission previously found this language to be reasonable. (Docket No. 28821, Arbitration Award – Track 1 Issues, GTC – Jt. DPL – Final, SBC Issue 35 at 22-26 (February 22, 2005)). The Arbitrators note that the CJP ICA contains different language than that found reasonable by the Commission in the Docket No. 28821 DPL matrix.*
AT&T GTC Issue 42	Should the agreement provide that notices by mail be deemed effective based on the return receipt?	GTC AT&T § 17.1; UTEX § 11.1	UTEX is proposing to keep the current language, which has been found to be reasonable by the PUC. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 159.*	Yes. It is proper for a notice to be deemed effective on the date shown on the receipt. Absent a return receipt, there is no assurance notice was received. *AT&T Texas witness Ms. Pellerin states that a return receipt is necessary to prove when notice was received and that lack of a receipt may lead to disputes. AT&T Texas Ex. 21, Pellerin Direct, at 45:1-13.*	*The Arbitrators conclude that paragraph 13.1 of the Docket No. 28821 CLEC Coalition ICA should be included in the ICA. AT&T Texas states in its DPL position statement and testimony that notice should be effective based on the date on the return receipt. AT&T Texas's proposed language states, however, that notice will be deemed received five calendar days after mailing. The Arbitrators agree with AT&T Texas's position statement that lack of a return receipt may result in disputes regarding receipt of notice. The CLEC Coalition ICA language accomplishes this purpose and is reasonable.*
AT&T GTC Issue 43	Should the Agreement incorporate the Accessible Letter process as a form of communication?	GTC AT&T §§ 17.3-17.6 UTEX §§ 30.6	No. AT&T cannot be allowed to "interpret" or change contract rights by sending an Accessible Letter. It routinely tries to do so. Then it claims UTEX received "notice" through the letter even if UTEX is not specifically mentioned. That is not notice. AT&T's use of a filing related to the prior and now wholly ineffective order that the parties use the CLEC Coalition agreement as the baseline cannot be taken as any form of	Yes. Accessible Letters are AT&T's standard commercial practice for notifying the CLEC community of general applicability. AT&T's language reflects a practice approved by the PUC and other state commissions. UTEX offers no alternative for disseminating information.	*The Arbitrators conclude that AT&T Texas's proposed language and paragraph 14.5 from the GTC section of the Docket No. 28821 CLEC Coalition ICA should be included in the ICA. It is reasonable to allow AT&T Texas to provide industry-wide notices using the Commission-approved accessible letter process. AT&T Texas may not use an accessible letter to modify the terms and conditions of the ICA, however, and paragraph 14.5 from the CLEC Coalition ICA*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
			agreement or consent to anything by UTEX.		*makes this point clear. The Arbitrators do not adopt UTEX's proposed language because it is too broad.*
AT&T GTC Issue 44	Which Party's tax language should be included into the agreement?	GTC AT&T §§ 18.1-18.9 UTEX §§ 12.1-12.7	UTEX is proposing to keep the current language in §§ 12.1-12.7. AT&T has not shown why it should be changed. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 160.*	AT&T's tax language is more explicit and complete than what UTEX proposes and more clearly defines the parties' rights and duties for taxation matters.	*The Arbitrators conclude that paragraphs 12.1-12.9 from the GTC section of the Docket No. 28821 CJP ICA should be included in the ICA. The Commission has already approved that language in another ICA, and UTEX states that it does not oppose the language. Furthermore, the CJP ICA language appropriately provides that the party providing a service shall be liable for any penalties or interest if that party fails to bill or collect a tax, while AT&T Texas's proposed language does not include such a provision.*
AT&T GTC Issue 45	Should the Agreement contain AT&T's proposed language regarding network maintenance and management?	GTC AT&T §§ 21.1-21.6 UTEX §§ 15.1-15.3	UTEX is proposing to keep the current language in §§ 15.1-15.3, except for the replacement of "service" with "arrangement" to clarify that many matters involved in the ICA do not involve a "service." AT&T has not shown why it should be changed. *UTEX would not object to the terms related to this issue that were prescribed in Docket 28821 for CJP, so long as those words cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 161.*	Yes. AT&T's language provides comprehensive terms and conditions for how the parties will handle network maintenance and management to minimize service impairment.	*The Arbitrators find that UTEX's proposal to use the terms approved by the Commission for the CJP ICA for this issue to be reasonable and adopt that language for this ICA.*
AT&T GTC Issue 46	How should the agreement address responses to Local, State and Federal Law enforcement agencies' requests for information?	GTC AT&T §§ 22.1.1, 22.3.1 UTEX §§ 16.1.1, 16.3.1	UTEX is proposing to keep the current language in §§ 16.1.1-16.3.1, except for the replacement of "end user" with "End User, End Use Customer or Customer's." UTEX already explained why that change is necessary given the parties' definitional and application disputes over what an "end user" is under various circumstances. AT&T has	AT&T's language appropriately makes each party is responsible for responding to law enforcement when served with a subpoena. It would be inappropriate and inefficient for one party to provide information to the other for that other party to then render that information to the law enforcement agency.	*The Arbitrators conclude that the following language should be included in the ICA:* *"LAW ENFORCEMENT AND CIVIL PROCESS* *Intercept Devices*

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			not shown why it should be changed.		*Local and federal law enforcement agencies periodically request information or assistance from local telephone service providers. When either Party receives a request associated with a customer of the other Party, the receiving Party will refer such request to the appropriate Party, unless the request directs the receiving Party to attach a pen register, trap-and-trace or form of intercept on the Party's own facilities, in which case that Party will comply with any valid request, to the extent the receiving party is able to do so; if such compliance requires the assistance of the other Party such assistance will be provided.* *Subpoenas* *If a Party receives a subpoena for information concerning a Customer the Party knows to be a Customer of the other Party, the receiving Party will refer the subpoena to the requesting entity with an indication that the other Party is the responsible company. Provided, however, if the subpoena requests records for a period of time during which the receiving Party was the Customer's service provider, the receiving Party will respond to any valid request to the extent the receiving Party is able to do so; if response requires the assistance of the other Party such assistance will be provided.* *Law Enforcement Emergencies* *If a Party receives a request from a law enforcement agency for a temporary number change, temporary disconnect, or one-way*

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					denial of outbound calls by the receiving Party's switch for a Customer of the other Party, the receiving Party will comply so long as it is a valid emergency request. Neither Party will be held liable for any claims, losses or damages arising from compliance with such requests on behalf of the other Party's Customer, and the Party serving the Customer agrees to indemnify and hold the other Party harmless against any and all such claims." *The Arbitrators have adopted UTEX's proposed language that a party shall comply with a request to the extent it is able to do so and that the other party shall provide assistance where necessary because that language is reasonable. The Arbitrators have addressed UTEX's concern regarding the term "end user" by using the broader term "Customer" in place of the term "End User." The Arbitrators agree with AT&T Texas that the word "losses" should be included in the indemnification to be consistent with the broader indemnification provision addressed in AT&T GTC Issue 30.*
AT&T GTC Issue 47	Which party's Changes in Subscriber Carrier Selection language should be included?	GTC AT&T §§ 23.1, 23.3 UTEX §§ 17.1, 17.3, 17.4	AT&T's language does not more accurately track and implement the current law regarding changes to subscriber carrier selections.	AT&T's language setting forth the details surrounding changes in subscriber authorizations more closely tracks the existing rules and industry practices and should be adopted. *AT&T Texas witness Ms. Pellerin states that AT&T Texas will accept UTEX's proposed paragraph 17.4. AT&T Texas Ex. 21, Pellerin Direct, at 49:19-21.*	*The Arbitrators conclude that AT&T Texas's proposed language and UTEX's proposed paragraph 17.4 should be included in the ICA. AT&T Texas's language appropriately references the relevant FCC rules, provides that the parties will abide by other applicable state and federal laws, and clarifies the meaning of the term "premise." AT&T Texas has agreed to UTEX's proposed paragraph 17.4. Finally, the Arbitrators have addressed UTEX's concern regarding the term "end user" in connection with AT&T GTC Issue 65.*

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AT&T GTC Issue 48	Which Party's provisions regarding amendments and waivers should be included in the agreement?	GTC AT&T §§ 24.1, 24.2, 25.1 UTEX §§ 18.1, 18.2	UTEX's proposed § 18.1 is the same as the current language. Section 18.2 merely applies "hornbook" contract law that a contract cannot be amended or interpreted using extrinsic evidence unless a provision is ambiguous, in which case evidence of the contract formers' intent – rather than some piece of paper AT&T posts on its website – is used.	AT&T's language has a fair process for amending the agreement, preserves both parties' rights under the FTA and should be adopted. UTEX's newly proposed language conflicts with Texas contract law and AT&T's proposed change-of-law provisions.	*The Arbitrators conclude that the following language should be included in the ICA:* *"Except as otherwise provided for in this Agreement, no provision of this Agreement shall be deemed amended, modified, or waived by either Party unless such an amendment, modification, or waiver is in writing, dated, and signed by an authorized representative of both Parties. The rates, terms and conditions contained in the amendment shall become effective upon approval of such amendment by the appropriate Commissions; and such amendment will not require refunds, true-up or retroactive crediting or debiting prior to the approval of the Amendment. AT&T TEXAS and CLEC shall each be responsible for its share of the publication expense (i.e. filing fees, delivery and reproduction expense, and newspaper notification fees), to the extent publication is required for filing of an amendment by a specific state. In addition, no course of dealing or failure of a Party strictly to enforce any term, right or condition of this Agreement will be construed as a waiver of such term, right or condition. By entering into this Agreement, the Parties do not waive any right granted to them pursuant to the Act; however, the Parties enter into this Agreement without prejudice to any positions they have taken previously, or may take in the future in any legislative, regulatory or other public forum addressing any matters, including matters related to the types of arrangements prescribed by this Agreement.* *Neither Party shall be bound by any preprinted*

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Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
					terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications." *The Arbitrators have combined portions of AT&T Texas's paragraph 24.1 and UTEX's paragraph 18.1. The various provisions adopted by the Arbitrators are consistent with one another and create a robust provision addressing amendment and waiver. The Arbitrators have not adopted UTEX paragraph 18.2 because it does not accurately describe Texas law regarding contract interpretation.*
AT&T GTC Issue 49	Should UTEX's language regarding trademarks be included in the agreement?	GTC UTEX §§ 29.0, 29.1	UTEX is proposing to use the same language as appears in the current agreement. AT&T has not shown why it should be changed. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 162.*	No. UTEX's language is redundant with language agreed to in AT&T § 9.8 and should be omitted from the agreement. *AT&T Texas witness Ms. Pellerin stated that UTEX's proposed language is redundant but that AT&T Texas would agree to include the language. AT&T Texas Ex. 21, Pellerin Direct, at 51:25-28.*	*The Arbitrators conclude that UTEX's proposed language should not be included in the ICA because it is redundant with language agreed to in AT&T Texas's proposed § 9.8.*
AT&T GTC Issue 50	Should UTEX's Regulatory Authority language be included in the agreement?	GTC UTEX §§ 30.0-30.5, 30.7	No, it does not exceed what is required and to the extent it limits AT&T's conduct it is necessary, and it does not disregard any laws. AT&T has no problem regulating UTEX or UTEX's customers, but it chafes at any restriction that may apply to AT&T.	No. UTEX's language exceeds what is required, improperly limits AT&T's conduct of its business, and disregards applicable laws. *AT&T Texas states that it is willing to include UTEX's proposed paragraph 30.1 so long as the remainder of UTEX's proposed language is excluded. AT&T Texas Initial Br. at 141. AT&T Texas witness Ms. Pellerin states that UTEX's proposed paragraph 30.2 is overbroad and would limit AT&T Texas's ability to conduct its business in a reasonable manner. AT&T Texas*	*The Arbitrators conclude that UTEX's proposed paragraph 30.1 should be included in the ICA because it is reasonable, reciprocal, and agreed to by AT&T Texas. Paragraphs 30.3 and 30.4 should also be included because they reasonably require AT&T Texas to provide UTEX with notice of tariff changes related to AT&T Texas's obligations under this ICA and are substantially similar to language adopted by the Commission in Docket No. 28821. (Docket No. 28821, Arbitration Award – Track 1 Issues, GTC – Jt. DPL – Final, SBC Issue 13 at 8 (February 22,*

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				Ex. 21, Pellerin Direct, at 52:17-18.	*2005)). Because the Arbitrators have concluded that AT&T Texas may use accessible letters to provide notices to CLECs, AT&T Texas's concerns about providing individual notice to UTEX do not apply. Paragraph 30.2 should not be included because it does not accurately describe Texas law regarding contract interpretation and unreasonably restricts AT&T Texas's ability to conduct its business. Paragraph 30.5 should be included in the ICA because the Commission adopted that language in Docket No. 28821. (Docket No. 28821, Arbitration Award – Track 1 Issues, GTC – Jt. DPL – Final, SBC Issue 13 at 8-9 (February 22, 2005)). Paragraph 30.7 should not be included in the ICA because other sections of the ICA address UTEX's use of UNEs, interconnection, collocation, rights of way, and ancillary functions, and this paragraph is not necessarily consistent with those other sections.*
AT&T GTC Issue 51	Should AT&T's language regarding prevention of end user fraud be included in the agreement?	GTC AT&T § 37.2 UTEX § 34.1	UTEX is proposing to use the same language as appears in the current agreement. AT&T has not shown why it should be changed.	Yes. AT&T's language specifies that the parties' cooperation on handling end user fraud includes toll calls, alternately billed calls and ported numbers.	*The Arbitrators conclude that UTEX's proposed language should be included in the ICA. The parties' current ICA includes that language, and AT&T Texas has not established the reasonableness of the limitations it has proposed on the parties' duty to cooperate regarding cases of fraud.*
AT&T GTC Issue 52	Should this Agreement include language relating to network disclosure that is consistent with 47 CFR § 51.325? If so, which party's	GTC AT&T §§ 38.0, 38.1 UTEX §§ 35.0, 35.1	UNE specific matters should be handled in the UNE appendix. UTEX is proposing to keep the current language. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 162.*	Yes. AT&T's language is consistent with federal law, including Network Disclosures rules regarding notice of network changes and retirement of copper loops and/or copper subloops. *See* FCC's *Triennial Review Order*, e.g., ¶¶ 281-84; 47 C.F.R. § 51.325- .335. Those rules require ILECs to file either long- or short-term public notice with the FCC or through public notice via industry forum, industry	*The Arbitrators conclude that AT&T Texas's proposed language should be included in the ICA. The Commission approved this language in the Docket No. 28821 CLEC Coalition ICA, and the language is reasonable.*

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	language is consistent?			publications, or a publicly accessible Internet site. Further requirements could hamper AT&T's ability to perform necessary or beneficial improvements to its network. UTEX's language should be rejected.	
AT&T GTC Issue 53	Should AT&T's language on the parties' network responsibilities be included in the agreement?	GTC AT&T §§ 40.1.1-40.1.2, 40.2	UTEX is proposing to use the same language as appears in the current agreement. AT&T has not shown why it should be changed. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 163.*	Yes. AT&T's language regarding the parties' network responsibilities reflects common practice in the industry and should be adopted.	*The Arbitrators conclude that AT&T Texas's proposed paragraphs 40.1.1 and 40.1.2 should be included in the ICA because they are reasonable, especially in light of the parties' history of disputes.* *The Arbitrators further conclude that AT&T Texas's proposed paragraphs 40.1.3-40.1.4 and 40.2 should be included in the ICA. Those paragraphs are reasonable and appropriate and were approved by the Commission in the Docket No. 28821 CLEC Coalition ICA.* *Finally, the Arbitrators find that, with the exception of insurance requirements, the Docket No. 28821 CJP ICA does not address the issues addressed by AT&T Texas's proposed language.*
AT&T GTC Issue 54	Should the responsibility to obtain all necessary approvals be reciprocal?	GTC AT&T § 41.1 UTEX § 39.1	UTEX is proposing to use the same language as appears in the current agreement. AT&T has not shown why it should be changed. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 163.*	Yes. AT&T's language provides parity regarding the responsibility to obtain any required approvals, which is commercially reasonable and necessary.	*The Arbitrators conclude that UTEX's proposed language should be included in the ICA. The Commission approved this language in the Docket No. 28821 CJP ICA. AT&T Texas asserts that the obligation to obtain required approvals should be reciprocal, but its language refers only to those approvals necessary for AT&T Texas to provide network elements and resale. AT&T Texas's language is unreasonable because UTEX should not be required to obtain approvals for AT&T Texas to provide those products and services.*
AT&T GTC	Should any technical or other	GTC AT&T § 44.1	It is imperative that every document that will affect the parties' relationship be set out in	No. It is not reasonable or practicable to explicitly identify and/or incorporate every	*The Arbitrators find AT&T Texas's argument to be persuasive in light of the facts that it is*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
Issue 55	reference or publication be inapplicable to the agreement unless explicitly identified therein?	UTEX § 42.1	the ICA. Otherwise there is no contract because it can be unilaterally changed by some AT&T Technical Publication. AT&T really likes its access tariff, since it is assiduously trying impose access on UTEX for virtually everything. Yet AT&T's interstate tariff must follow very similar rules to those proposed here. *See* FCC Rules 61.74 and 61.25.	technical reference, publication, industry standard or other document that may apply to the agreement. UTEX's new language is unduly restrictive.	*consistent with the decision made by the Commission in Docket 28821 and that the industry operates under this arrangement successfully. The Arbitrators decline to adopt UTEX's proposed language.* *The Arbitrators note that the issue of technical publications relating to UNEs is addressed under DPL issue AT&T UNE-13.*
AT&T GTC Issue 56	Should the Agreement state that it is to be construed first in accordance with Federal law; and what is the appropriate venue for disputes?	GTC AT&T § 47.1 UTEX § 45.1	UTEX is proposing to use the same language as appears in the current agreement. AT&T has not shown why it should be changed. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 163.*	Yes. ICAs must first be construed in accordance with federal law. State law is considered only to the extent not inconsistent with federal law. Dallas is a more reasonable venue for personal jurisdiction.	*The Arbitrators conclude that the following language should be included in the ICA:* *"The validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the Parties will be governed by the laws of the State of Texas other than as to conflicts of laws, except insofar as federal law may control any aspect of this Agreement, in which case federal law will govern such aspect. The Parties submit to personal jurisdiction in Dallas and Austin, Texas, and waive any and all objections to a Texas venue."* *This language appears in the parties' current ICA, appropriately describes the relationship between state and federal law with respect to this agreement, and is reasonable. While UTEX states that it has proposed the same language as that in the parties' current ICA, UTEX has deleted the reference to Dallas in the provision regarding personal jurisdiction. The Arbitrators find that including both Dallas and Austin is reasonable because AT&T Texas is based in Dallas and UTEX is based in Austin.*
AT&T	Should the	GTC	CICs are for IXCs. UTEX is not an IXC, so it	No. UTEX's new language is designed to avoid	*In the text of the Award in the section titled*

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Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
GTC Issue 57	agreement include language explicitly stating that UTEX is not obligated to provide AT&T with its Carrier Identification Code (CIC) except under very specific circumstances?	AT&T § 48.1 UTEX § 46.1	does not need a CIC and cannot be forced to obtain one. LECs have OCNs.	access charges to which AT&T is entitled. Terms and conditions regarding intercarrier compensation are properly set forth in a separate attachment. UTEX's language here is inappropriate in any event, but may also yield internally inconsistent terms.	*"Intercarrier Compensation for Traffic Involving UTEX's ESP Customers," the Arbitrators have concluded that UTEX is an IXC in certain circumstances. Consequently, the Arbitrators conclude that UTEX's proposed language here is inappropriate.*
AT&T GTC Issue 58	Is UTEX's Dialing Parity language consistent with requirements of the FTA?	GTC UTEX §§ 47.0, 47.1	This proposed language deals with a specific dispute between the parties. AT&T is blocking calls addressed to UTEX assigned numbering resources given out under FCC direction and with full knowledge of the intended use. The language is consistent with, and properly implements, current law.	No. UTEX's unilateral language is inconsistent with the Dialing Parity obligations of all LECs. It also imposes number portability obligations on AT&T that UTEX is not willing to bear itself. UTEX's language could conflict with industry practice regarding non-geographic numbers that utilize a database management system for call routing. *UTEX's language would impose performance requirements on AT&T Texas that are not under its control. UTEX is proposing non-SS7-based local number portability (LNP), which is not technically feasible. Neinast Dir. at 5-6.* *This additional language is unnecessary, as the Commission has previously approved AT&T Texas for dialing parity, LNP, and all of the remaining fourteen points required by the FCC for § 271 relief. AT&T Texas continues to support the requirements and obligations for this. Id.*	*The Arbitrators find that the number blocking dispute to which UTEX refers is addressed in the Award in the section titled "500 Service." The Arbitrators also find AT&T's argument concerning the proposed language placing performance requirements upon AT&T Texas that are not under its control, to be persuasive.* *The Arbitrators find that AT&T Texas has been approved by the Commission for dialing parity, LNP, and all of the remaining fourteen points required by the FCC for § 271 relief, and that 47 C.F.R. §§ 51.203-51.217 sufficiently addresses these issues. The Arbitrators therefore decline to adopt UTEX's proposed language.*
AT&T GTC Issue	Should AT&T's language regarding	GTC AT&T §§ 49.3, 49.4	AT&T seems very concerned about protecting all those end users it says UTEX does not have.	Yes. AT&T's language properly reflects UTEX's duties to its end users and the ability for AT&T to provide services to its end users upon	*The Arbitrators conclude that AT&T Texas's proposed language should be included in the ICA. The language is reasonable, and UTEX*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
59	customer inquiries be included in the agreement?			end user request.	*has not provided a substantive objection to it.*
AT&T GTC Issue 60	Should AT&T's language regarding disclaimer of warranties be included in the agreement?	GTC AT&T § 50.1	UTEX's proposed language largely uses the current language, except that it is reciprocal. *UTEX stated that it would not object to the terms in the Docket No. 28821 CJP ICA so long as those terms cannot later be used to undercut or overrule specific rulings on other open issues. UTEX Initial Br. at 167.*	Yes. AT&T's language better reflects a clear means by which the parties may disclaim all warranties and representations.	*The Arbitrators conclude that AT&T Texas's proposed language should be included in the ICA. The language was approved by the Commission in the Docket No. 28821 CLEC Coalition ICA, is reciprocal, and is reasonable.*
AT&T GTC Issue 61	Which terms should be defined in the Agreement and what are the appropriate definitions to be used?	GTC Entire § 51	UTEX's definitions are wholly compliant with Order No. 27. And they are consistent with law and precise. The same cannot be said about AT&T's.	Both parties have proposed numerous definitions. For each definition, the PUC should consider: 1) Is the term used in the agreement? 2) Is the proposed definition consistent with applicable law? 3) Which party's definition more accurately and appropriately defines the term? AT&T will address definitions with specificity in its testimony.	*The Arbitrators have addressed this issue in Attachment C to the Award.*
AT&T GTC Issue 62	What is the appropriate reference to resale services?	GTC AT&T § 54.1 UTEX § 52.1	This can easily be fixed in the conforming stage, or it would have been fixed if AT&T had ever mentioned it to UTEX. But since they have never negotiated this kind of discussion has never occurred.	The GTCs should not state that resale prices are included in the resale attachment, since some resale prices only appear in the pricing schedule. Since the parties disagree as to the resale attachment(s), this language should remain flexible.	*The Arbitrators conclude that during the conforming process the parties should draft appropriate language to refer to the resale attachments.*
AT&T GTC Issue 63	What is the appropriate reference to UNEs?	GTC AT&T § 55.1 UTEX § 53.1	This can easily be fixed in the conforming stage, or it would have been fixed if AT&T had ever mentioned it to UTEX. But since they have never negotiated this kind of discussion has never occurred.	The GTCs should not state that UNE prices are included in the UNE attachment, since UNE prices appear in the pricing schedule. Since the parties disagree as to the UNE attachment(s), this language should remain flexible.	*The Arbitrators conclude that during the conforming process the parties should draft appropriate language to refer to the UNE attachments.*
AT&T GTC Issue 64	What is the appropriate scope of AT&T's Network	GTC AT&T § 56.0 UTEX § 54.1	This is largely existing language, changed only to reflect that there will be different attachments.	UTEX's language should be rejected as unnecessary, repetitive and potentially creating conflicts and/or ambiguities with appendices within which each subject is specifically	*The Arbitrators decline to adopt the language proposed by either party. AT&T Texas's proposed language in § 56.0 simply states, "Network Interconnection Methods." AT&T*

The parties provided the text in normal font in the joint DPL matrix filed on March 29, 2010. The Arbitrators have added the text in italics.

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
	Interconnection obligations and should those obligations be addressed in the GTCs?			discussed.	*Texas has not provided any explanation for its proposed language. UTEX's proposed language in § 54.1 is unnecessary given that it requires the parties to interconnect their networks and refers to Attachment 3: Network Interconnection Methods for the interconnections methods to be utilized by the parties. Furthermore, UTEX's proposed language states that § 54.1 and Attachment 3 mentioned above are not intended to impair UTEX's right to interconnect with UNEs. The Arbitrators find the language proposed by both parties is unnecessary given that the terms relating to network interconnection and unbundled network elements are addressed in other attachments.*
AT&T GTC Issue 65	Should the agreement refer to end users as "End Users, End Use Customers, or Customers" as UTEX proposes, or as End Users?	GTC Various sections, AT&T §§ 51.1.40 UTEX §§ 6.6, 7.1.2, 7.3.1.1, 16.1.1, 16.3.1, 17.2, 34.2, 51.29, 51.31, 51.32	There are customers. There are two types. end users and carriers. This is one of the essential issues in this case. AT&T is trying to deem non-carriers to be carriers, or to treat them as some form of quasi-carrier. The definitions will be key to this case. UTEX will – like AT&T – address this in its testimony.	End users should be referred to generally as "end users" or as "End Users" as that term is defined. UTEX's use of "End Users, End Use Customers, or Customers" or variations thereof are too broad and improperly include customers that are not end users.	*This issue is addressed in the text of the Award in the section titled "End User Definition."*
AT&T Resale-1	Should the Resale attachment refer to the term "End Users", or to UTEX's undefined terms "Users" or "customers"?	AT&T Resale §§ 1.15, , 3.7, 3.11, 4.1.2, 6, 7.1.1, 7.1.2, 7.1.4, 7.1.9, 7.1.10, 8.1, 8.1.1, 8.1.2, 8.1.3, 8.1.4	The parties have a major disagreement over the definition and application of the term "end user." AT&T's contention that § 251(c)(4)(A) resale applies only to "end users" is flatly incorrect. Section 251(c)(4) does not use "end users"; it refers to "any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers" There may well be certain "subscribers that are not telecommunications carriers" who are also not "end users"	Yes. Customers using AT&T's resale services should be referred to as End Users, consistent with the decision in Docket 28821 Resale Issue 8. UTEX's use of the undefined terms "User" and "customer" is inconsistent with FCC rules and PUC's decisions. The terms "User" and "customer" should be replaced by "End User" in compliance with current law.	*UTEX has not provided any examples to support its statement that there may be certain subscribers that are not "telecommunications carriers" who are also not "end users." Consistent with the Commission's decision in Docket No. 28821 under Resale DPL SBC Issue 8, the Arbitrators conclude that UTEX may resell services purchased under the Resale Attachment only to end users. (Docket No. 28821, Arbitration Award – Track 1 Issues , Resale – JT DPL – Final, DPL SBC Issue 8*

The parties provided the text in normal font in the joint DPL matrix filed on March 29, 2010. The Arbitrators have added the text in italics.

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
					at page 3 of 9 (February 22, 2005)). The Arbitrators, therefore, conclude that the terms "User" and "customers" should be replaced with the term "End User" in the sections in the Resale Attachment identified by AT&T. *The issue regarding the definition of "End User" is addressed in detail in the text of the Award in the section titled "End User Definition."*
AT&T Resale-2	Should the Resale attachment state that AT&T's Telecommunications Services are available for resale pursuant to § 251(c)(4) of the FTA, and should it specify what services may be resold?	AT&T Resale §§ 1.1.1, *1.1.3* UTEX §§ 5.1(a), 5.1(a)(i), 5.1(a)(ii), 5.1(a)(iii), 5.1(a)(vi), 5.1(b), 5.1(c), 5.1(d), 5.1(e), 5.2	UTEX purposefully and deliberately slimmed down the resale terms because it will not engage in the same kind of resale as "retail POTS" LECs do. AT&T's terms address things that will not be used and are inappropriate given how any resale will be used. But, to make things simpler, UTEX will agree to employ the same terms as appear in the 28821 CJP agreement, if the PUC prefers them. The only remaining question will then be whether UTEX could secure an AT&T service and resell it to an ESP. ESPs are end users, but it appears that AT&T's proposed terms say they are not.	Yes. AT&T's language correctly states that its Telecommunications Services are offered to UTEX for resale pursuant to § 251(c)(4). UTEX's list of the specific elements of resold basic local exchange service is inappropriate, because the elements are defined by the underlying retail service(s). *AT&T states that UTEX's proposed list of local exchange services available for resale in section § 5.1 is inaccurate, incomplete, and unnecessary. It is inaccurate because, for example, resold basic local exchange service does not include "IntraLATA Interexchange Traffic charges minus the Avoided Cost Discount if AT&T Texas is the primary toll service provider," as UTEX's proposed § 5.1(a)(vi) mistakenly states. It is incomplete because it omits numerous telecommunications services that are available to UTEX for resale, e.g., tariffed Plexar service. It is unnecessary because the descriptive characteristics and elements of AT&T Texas's telecommunications services available to UTEX for resale are defined by the underlying retail services, not by the ICA. AT&T Texas Ex. 21, Pellerin Direct,*	*Although UTEX's current business plans do not involve the resale of services as "retail POTS" LECs engage in, the Arbitrators find that it is appropriate to include a Resale attachment in the ICA to address resale issues in the event UTEX's business plans in the future involve resale of services that AT&T Texas provides to its retail customers, as well as for the benefit of other CLECs who may choose to adopt the UTEX ICA.* *The Arbitrators find that AT&T's proposed language in § 1.1.1 appropriately states that its telecommunications services are available for resale pursuant to § 251(c)(4) and refers to the Appendix Pricing for the list of services available for resale. The Arbitrators decline to adopt UTEX's proposed list of services available for resale because it is inaccurate, incomplete, and unnecessary for the reasons stated by AT&T Texas. Therefore, the Arbitrators adopt AT&T's proposed language in AT&T Resale § 1.1.1 with a modification. The first sentence of § 1.1.1 states that resale services are available in accordance with Section 251(c)(4) of the Act and consistent with*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
				at 68:3-16. *AT&T Texas points out that in the process of revising the DPL matrix to comply with Order No. 30, it inadvertently omitted Resale Section 1.1.3 from this DPL issue. AT&T Texas states that Resale Section 1.1.3 identifies certain services not subject to resale, e.g., voice mail. AT&T Texas Ex. 21, Pellerin Direct, at footnote 18 on page 67.*	***Section 2.12.1.3** of the General Terms and Conditions of the Agreement. However, Section 2.12.1.3 does not appear in the General Terms and Conditions. The Arbitrators find that the incorrect reference to Section 2.12.1.3 should be deleted unless AT&T Texas can provide the correct section reference in the General Terms and Conditions.* *The Arbitrators adopt AT&T Texas's proposed § 1.1.3 because the list of services not available for resale under AT&T Texas's proposed § 1.1.3 includes services contained in UTEX's proposed § 1.1.1 as well as services in the resale attachment in the CJP ICA approved by the Commission in Docket No. 28821. Also, given that AT&T Texas's resale obligation pursuant to FTA § 251(c)(4) is limited to telecommunication services that it provides at retail to its subscribers, the services listed in § 1.1.3 are appropriately not available for resale.* *The issue of whether ESPs qualify as "end users" for purposes of the resale attachment is addressed in the text of the Award in the section titled "End User Definition."*
AT&T Resale-3	How should the agreement describe UTEX's resale obligations?	AT&T Resale § 1.1.2 UTEX § 1.1.1	See UTEX Position Statement for Resale 2.	AT&T's language is directly from § 251(b)(1) of the FTA and should be adopted.	*UTEX has neither provided any justification for its proposed language nor any substantive objection to AT&T Texas's proposed language. The Arbitrators find that AT&T Texas's proposed language in §1.1.2 reflects the language in FTA § 251(b)(1) and therefore adopt it.*
AT&T Resale-	(a) Should the agreement	AT&T Resale §§ 1.1.4, 2.2.5, 2.2.6,	See UTEX Position Statement for Resale 2.	(a) Yes. AT&T's language properly states applicable law. It also properly limits the	*a) The Arbitrators find that AT&T Texas's proposed § 1.1.4 reflects FTA § 251(c)(4)(B)*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
4	include language from § 251(c)(4)(B) that prohibits unreasonable restrictions on resale by AT&T as well as cross-class selling by UTEX? (b) May UTEX use resold services to provide access or interconnection services to itself or other carriers?	3.10 UTEX §§ 1.1.2		availability of grandfathered services, consistent with the decision in Docket 28821 Resale Issue 1. UTEX's language side-steps appropriate restrictions on resale and should be rejected. (b) No. AT&T's language limiting UTEX's resale of AT&T's services to other carriers is consistent with the decision in Docket 28821 Resale Issue 8.	*regarding restrictions on resale and prohibition on cross –selling between different categories of subscribers. Furthermore, AT&T Texas's proposed § 2.2.5 on resale of grandfathered services is consistent with the Commission's decision on Resale DPL SBC Issue 1 in Docket No. 28821. (Docket No. 28821, Arbitration Award – Track 1 Issues , Resale – JT DPL – Final, DPL SBC Issue 1 at page 1 of 9 (February 22, 2005)) UTEX has neither provided any justification for its proposed language nor any substantive objection to AT&T's proposed language. The Arbitrators therefore, adopt AT&T Texas's proposed language for §§ 1.1.4 and 2.2.5* *b) Furthermore, AT&T Texas's proposed §§ 2.2.6 and 3.10 on limiting UTEX's resale of AT&T Texas's services to only end users and prohibiting resale of such services by UTEX to itself, its affiliates and/or subsidiaries and other carriers are consistent with the Commission's decision on Resale Issue 8 in Docket No. 28821. (Docket No. 28821, Arbitration Award – Track 1 Issues , Resale – JT DPL – Final, DPL SBC Issue 8 at page 3 of 9 (February 22, 2005)). UTEX has neither provided any justification for its proposed language nor any substantive objection to AT&T Texas's proposed language. The Arbitrators therefore, adopt AT&T Texas's proposed language for §§ 2.2.6 and 3.10.*
AT&T Resale-5	Should the agreement contain language addressing the	AT&T Resale §§ 1.1.10.1, 1.1.10.1.1, 1.1.10.1.1.1, 1.1.10.1.2	See UTEX Position Statement for Resale 2.	Yes. AT&T's language reflects processes in place for working with law enforcement agencies and should be adopted.	*The Arbitrators find that it is appropriate to have language in the Resale attachment that would provide for processes for working with law enforcement agencies using Call Trace.*

The parties provided the text in normal font in the joint DPL matrix filed on March 29, 2010. The Arbitrators have added the text in italics.

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
	service known as Call Trace?				*UTEX has neither proposed language nor explained the reasons it opposes AT&T Texas's proposed language. The Arbitrators, therefore, adopt AT&T Texas's proposed language for §§ 1.1.10.1, 1.1.10.1.1, 1.1.10.1.1.1, and 1.1.10.1.2.*
AT&T Resale-6	Should the agreement reflect a single avoided cost discount for all resale services?	AT&T Resale § 1.1.11 UTEX § 5.3	See UTEX Position Statement for Resale 2.	No. AT&T's language properly reflects that the avoided cost discount is generally 21.6%, but that not all resold services receive the full discount.	*Based on the review of avoided cost discounts for resale services in the pricing schedule in the CJP ICA approved by the Commission in Docket No. 28821 and adopted by the Arbitrators under DPL Issue AT&T Texas PR-1, the Arbitrators find that most, but not all, services available for resale are subject to a 21.6% avoided cost discount. However, a few resale items are subject to a 5% discount, e.g., Bill Plus and Consolidated Billing. UTEX has not provided justification for its proposed language and has not explained the basis for its opposition to AT&T Texas's proposed language. The Arbitrators, therefore, adopt AT&T Texas's proposed language for §* 1.1.11.
AT&T Resale-7	Should the agreement include specific detailed information on how both parties should treat volume, term, and other discounts on resold services?	AT&T Resale §§ 2.3.1.1, 2.3.2, 2.3.3, 2.3.4, 2.3.4.1, 2.3.4.2, 2.3.4.3, 2.3.5, 2.3.5.1, 2.3.5.2, 3 UTEX § 2.3	See UTEX Position Statement for Resale 2.	Yes. AT&T's language is consistent with prior PUC decisions, including Docket 28821 Resale Issue 1. It addresses UTEX's ability to assume retail contracts and states the appropriate discounts. UTEX's language is unclear. *AT&T Texas states that its proposed language provides necessary and specific details directing how the parties will handle volume, terms and other discounts on resold services consistent with previous Commission decisions. In this regard, AT&T Texas cites the Commission's decision in Docket No. 28821, Resale Issue 1, which adopted AT&T Texas's proposed language removing the limits on aggregating*	*The Arbitrators find that it is appropriate to include language addressing resale terms applicable to volume, term, and customer specific pricing (CSP) contracts as well as responsibilities of each party in connection with assumption of CSP contract conversions. UTEX has not provided justification for its proposed language and has not explained the basis for its opposition to AT&T Texas's proposed language. The Arbitrators, therefore, adopt AT&T Texas's proposed language for §§ 2.3.1.1, 2.3.2, 2.3.3, 2.3.4, 2.3.4.1, 2.3.4.2, 2.3.4.3, 2.3.5, 2.3.5.1, 2.3.5.2, and 3.*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
				Plexar services for the purpose of calculating volume discounts. Furthermore, AT&T Texas points out that UTEX's proposed language does not address UTEX's ability to assume retail contracts and the associated discounts. AT&T Texas Ex. 21, Pellerin Direct, at 70:22-71:6.	
AT&T Resale-8	Should the agreement provide detailed information related to the ordering, provisioning and billing of resale services?	AT&T Resale §§ 3.1.1, 3.1.2, 3.1.2.1, 3.1.3, 3.1.4, 3.1.4.1, 3.2, 3.3, 3.4, 3.4.1, 3.4.1.1-3.4.1.1.4, 3.4.2 UTEX §§ 3.1.1, 3.2.1, 3.2.2	See UTEX Position Statement for Resale 2.	Yes. AT&T's language provides comprehensive terms reflecting longstanding processes developed through industry collaboratives. UTEX's language is unclear.	*This issue is addressed in the text of the Award in the section titled "OSS and Ordering."*
AT&T Resale-9	Is AT&T obligated to offer Originating Line Number Screening (OLNS) for Resale to UTEX?	UTEX Resale § 3.7	See UTEX Position Statement for Resale 2.	No. *AT&T Texas states that Originating Line Number Screening (OLNS) is a query service associated with the Line Information Database (LIDB), which is used, for example, to provide operator services with the profile of an originating line to indicate what types of calls the caller can make. AT&T Texas states that it does not offer LIDB pursuant to an ICA, and OLNS is a LIDB service. Furthermore, OLNS is not a Telecommunications Service, nor a service AT&T provides (or intends to provide) at retail to End Users and so AT&T Texas has no related resale obligation. UTEX's language should be rejected. AT&T Texas Ex. 21, Pellerin Direct, at 72:15-23.*	*The Arbitrators find that AT&T Texas's resale obligation pursuant to FTA § 251(c)(4) is limited to telecommunication services that it provides at retail to its subscribers. Since OLNS is not a telecommunications service and AT&T Texas does not offer OLNS on a retail basis, the Arbitrators conclude that AT&T Texas has no resale related obligation for OLNS. Furthermore, UTEX has not provided justification for its proposed language. Therefore, the Arbitrators decline to adopt UTEX's proposed language.*
AT&T Resale-	Should the agreement reflect	AT&T Resale § 3.9	See UTEX Position Statement for Resale 2.	Yes. AT&T's language properly sets forth UTEX's obligations with respect to PIC and	*In order to avoid disputes between the parties, the Arbitrators find that it is appropriate for the*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
10	UTEX's responsibility for Primary IXC (both PIC and LPIC) change charges associated with UTEX's End Users utilizing AT&T's resold services?			LPIC change charges associated with UTEX's End Users utilizing AT&T's resold services. The language is needed to avoid to disputes regarding these charges.	*Resale attachment to include provisions regarding UTEX's responsibility for PIC and LPIC change charges associated with UTEX's End Users utilizing AT&T Texas's resold services. UTEX has neither proposed language nor explained its opposition to AT&T Texas's proposed language. The Arbitrators therefore, adopt AT&T Texas's proposed language for § 3.9.*
AT&T Resale-11	Should the agreement contain specific information regarding the maintenance, testing and repair of resold services?	AT&T Resale §§ 4.1, 4.1.1	See UTEX Position Statement for Resale 2.	Yes. AT&T's language sets forth AT&T's responsibilities for trouble reporting, while appropriately restricting UTEX's authorization to touch AT&T's network facilities.	*The Arbitrators find that AT&T Texas's proposed language is reasonable. The first two sentences in § 4.1 address the ability of UTEX to report trouble for its resale end users to an AT&T Texas trouble reporting center as well as the obligation on AT&T Texas to direct calls from UTEX end users to the number provided by UTEX. This language is substantially similar to the language in the CLEC Coalition/AT&T Texas ICA approved in Docket No. 28821. The last sentence in § 4.1, prohibiting UTEX from repairing, maintaining, or otherwise touching AT&T Texas's network facilities, is reasonable to protect the security and operability of AT&T Texas's network. The proposed language in § 4.1.1 refers to the CLEC handbook for the methods and procedures for trouble reporting, which the Arbitrators find reasonable because it ensures that AT&T Texas has in place a uniform process for trouble reporting for all CLEC resellers. The Arbitrators note that UTEX has neither proposed language on this issue nor explained its opposition to AT&T Texas's proposed language. The Arbitrators adopt*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
					AT&T Texas's proposed language for §§ 4.1 and 4.1.1.
AT&T Resale-12	How should the agreement address Ancillary Services such as 911?	AT&T Resale §§ 5, 5.1, 5.2, 5.3, 5.3.1 UTEX § 5	See UTEX Position Statement for Resale 2.	AT&T's language regarding 911 service for resold lines sets forth explicit terms regarding both parties' responsibilities, minimizing disputes and potential 911 failures. UTEX's reference to 911 as an element of basic local service is inadequate. UTEX's § 5 provides information regarding services available for resale that AT&T properly addresses elsewhere in the resale attachment (e.g., AT&T § 1.1.1).	*The Arbitrators find that UTEX's reference in its proposed § 5.1(a)(ii) to 911 as an element of basic local service is inadequate. It is appropriate that the resale attachment delineate specific terms and conditions setting forth the parties' responsibilities with respect to the provision of emergency 911 services to UTEX's resale end users. The Arbitrators note that AT&T Texas's proposed language in § 5.3 is the same as the language on E911/911 services in the resale attachment in the CJP/AT&T Texas ICA approved by the Commission in Docket No. 28821. UTEX has not provided justification for its proposed language and has not explained the basis for its opposition to AT&T Texas's proposed language. The Arbitrators, therefore, adopt AT&T Texas's proposed language for §§ 5, 5.1, 5.2, 5.3, and 5.3.1.*
AT&T Resale-13	(a) Should the agreement provide terms and conditions for UTEX to obtain white page directory listings for End Users utilizing resale services, as well as directory information pages? (b) Is AT&T obligated to provide UTEX's	AT&T Resale §§ 5.5.1, 5.5.2, 5.5.3, 5.5.3.1, 5.5.3.2, 5.6, 5.6.1, 5.7, 5.8 UTEX § 5.1(a)(v); UTEX Attachment 2, Appendix 1 Business Enhancement UNE	See UTEX Position Statement for Resale 2.	(a) Yes. AT&T's language provides terms and conditions regarding white page directory listings for UTEX's End Users utilizing resale services and directory information pages that are consistent with uniform practices in Texas and should be adopted. UTEX's proposal to omit specific terms and conditions may lead to disputes. *AT&T Texas states that the CLEC Coalition ICA includes white pages language that resulted from a consensus reached by industry participants in that proceeding. AT&T Texas Initial Br. at 175-76. AT&T Texas states that the Commission should use that language as a guideline for this ICA. Id.*	*(a) The Arbitrators conclude that Appendix White Pages (WP) – Resale from the Docket No. 28821 CLEC Coalition ICA should be included in the ICA. This language resulted from a consensus of industry participants in that docket, and UTEX has not offered its own comprehensive white pages language.* *(b) The Arbitrators conclude that UTEX's proposed language regarding yellow pages should not be included in the ICA because AT&T Texas has no obligation to provide yellow pages for resale.*

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Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
	End Users utilizing resale services with yellow page directories?			(b) No. Yellow pages are not available for resale.	
AT&T Resale-14	Should the agreement provide terms and conditions for UTEX to obtain Operator Services / Directory Assistance (OS/DA) services for its End Users utilizing resale services?	AT&T Resale §§ 5.9, 5.10. 5.11, 5.12, 5.12.1, 5.12.2, 5.12.2.1, 5.12.3, 5.12.4, 5.13, 5.13.1, 5.14, 5.14.1, 5.14.2, 5.14.3, 5.14.4	See UTEX Position Statement for Resale 2.	Yes. Access to OS/DA services is included with retail local exchange service and is therefore part and parcel of resale services. Accordingly, it is important for the resale attachment to reflect OS/DA terms and conditions with specificity. AT&T's language should be adopted.	*The Arbitrators note that UTEX has neither proposed language on this issue nor explained its opposition to AT&T Texas's proposed language.* *AT&T Texas's proposed language in § 5.11 states that AT&T Texas will offer UTEX the opportunity to provide customized routing for its End Users' OS/DA calls where technically feasible. The Arbitrators note that the language addressing customized routing in Appendix Customized Routing-Resale in the CLEC Coalition ICA approved in Docket No. 28821 is much more comprehensive than AT&T Texas's proposed language and therefore adopt the Appendix Customized Routing in the CJP ICA to replace § 5.11.* *The Arbitrators find the language in the remaining sections of AT&T Texas's proposed language to be substantially similar to the language on this issue in the CJP ICA approved in Docket No. 28821 with one exception. Consistent with the language in the CJP ICA, the provisions in §§ 15.14.2 and 5.14.4 should refer to both Operator Services (OS) and Directory Assistance (DA) services.* *The Arbitrators adopt AT&T Texas's proposed language for §§ 5.9, 5.10, 5.12, 5.12.1, 5.12.2, 5.12.2.1, 5.12.3, 5.12.4, 5.13, 5.13.1, 5.14,*

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					5.14.1, 5.14.2, 5.14.3, and 5.14.4 with the foregoing modifications.
AT&T Resale-15	Should the agreement contain terms regarding UTEX's responsibility for various charges associated with UTEX's End Users utilizing resale services?	AT&T Resale §§ 6.1, 6.1.1, 6.2, 6.2.1, 6.3, 6.4 UTEX § 6.1, 6.1(a), 6.1(b)	See UTEX Position Statement for Resale 2.	Yes. AT&T's language clearly establishes the various charges for which UTEX is responsible on behalf of its End Users utilizing resale services and should be adopted. UTEX's language lacks sufficient details to avoid disputes. *AT&T Texas states that its proposed language provides needed specificity and is much more comprehensive than UTEX's language. For example, AT&T Texas's language provides terms and conditions for how both parties should address the payment of charges associated with, but not limited to, collect, third number billed, toll, and information services (for example, 900 number) calls. AT&T Texas claims that UTEX's language would limit its responsibility to "casual use charges" and "CLASS feature charges" and UTEX's language is not clear on whether charges for collect calls would be considered casual use charges. Furthermore, AT&T Texas states that its proposed language allows both parties to understand what options are available to UTEX when miscellaneous charges are being applied and not collected. AT&T Ex. 21, Pellerin Direct, at 74:20-75:2.*	*The Arbitrators note that UTEX's proposed §§ 6.1(a) and 6.1(b) do not appear in the resale attachment. The Arbitrators adopt AT&T Texas's proposed language for §§ 6.1, 6.1.1, 6.2, 6.2.1, 6.3, and 6.4 because it clearly delineates the terms regarding UTEX's responsibility for various charges. UTEX has not provided justification for its proposed language in §6.1 nor has it explained its opposition to AT&T Texas's proposed language.*
AT&T Resale-16	Should AT&T be held to "Resale Guidelines" that do not exist and have never been proposed by	AT&T Resale § 7.1.5	See UTEX Position Statement for Resale 2.	No. The appropriate reference regarding bill payment is to the GTCs, rather than to non-existent "Resale Guidelines".	*UTEX does not provide support for its proposed language that makes reference to AT&T Texas's Resale Guidelines nor does it explain its opposition to AT&T Texas's proposed language. Therefore, the Arbitrators adopt AT&T Texas's proposed language for § 7.1.5, which requires*

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	AT&T?				*bill payments by UTEX to be made in accordance with the General Terms and Conditions. This is consistent with the language approved by the Commission in Docket No. 28821 for the CLEC Coalition ICA.*
AT&T Resale-17	Should the resale attachment address intercarrier compensation arrangements?	UTEX Resale §§ 9, 9.1	See UTEX Position Statement for Resale 2.	No. The resale appendix governs the terms and conditions under which UTEX may resell AT&T's services pursuant to § 251(c)(4). Terms and conditions for intercarrier compensation are in a separate attachment. Inclusion of UTEX's language increases the risk of internally inconsistent provisions.	*The Arbitrators conclude that the resale attachment in the ICA should address provisions relevant to resale obligations imposed on the parties pursuant to FTA §§ 251 (b)(1) and (c)(4). The Arbitrators find that it is appropriate to address terms and conditions for intercarrier compensation in a separate attachment (Appendix 6 in Attachment NIM) to avoid internally inconsistent provisions and unnecessary disputes between the parties. Furthermore, UTEX has not provided any explanation in support of its proposed language. The Arbitrators, therefore, decline to adopt UTEX's proposed language.*
AT&T Resale-18	Should End User Common Line (EUCL) charges apply on each line resold?	AT&T Resale § 7.1.9	See UTEX Position Statement for Resale 2.	Yes. UTEX is responsible for all applicable charges set forth for each resold line, including the EUCL charges. UTEX's objection to including "End" in defining EUCL is inappropriate; that is what the "E" stands for.	*The Arbitrators conclude that it is inappropriate to omit the word "End" in the reference to "End User Common Line charges" in proposed section §7.1.9, as UTEX suggests, given that End User Common Line (EUCL) charges are applied to End Users on each local exchange line resold in the agreement. UTEX has not explained its opposition to AT&T Texas's proposed language. The Arbitrators, therefore, adopt AT&T Texas's proposed language for § 7.1.9.*
AT&T Resale-19	Should the resale attachment simply reference the applicable provisions of the GTCs with	AT&T Resale §§ 8.1, 8.1.1, 8.1.1.1, 8.1.1.1.1, 8.1.1.1.2, 8.1.1.1.3 8.2, UTEX §§ 8.1, 8.2,	See UTEX Position Statement for Resale 2.	Yes, and the contract language should contain specific provisions for suspension and restoral of resale services. The GTC provisions regarding discontinuance of service apply to resale services, so there is no need for inclusion in the resale attachment.	*UTEX's proposed language addresses procedures for discontinuing service to UTEX. The Arbitrators decline to adopt UTEX's proposed modifications to §§ 8.1 and 8.2, which require the procedures of discontinuance of services to be governed by AT&T Texas's resale*

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	respect to discontinuance of service?	8.2.1, 8.2.2, 8.2,3, 8.2.4, 8.2.5		*AT&T Texas opposes UTEX's proposal to establish procedures for discontinuance of service in accordance with AT&T Texas's "Resale Guidelines" by arguing that such "Resale Guidelines" do not exist and have never been proposed by AT&T Texas. AT&T Exhibit No. 21, Pellerin Direct, at 75:27-76:6.* UTEX's language includes specific provisions that may be inconsistent with the GTCs and should be rejected. Yes. AT&T provides language necessary to care for end user disconnections for non-payment and subsequent restoral.	*guidelines. UTEX has not provided justification for its proposed language and it has not provided evidence to demonstrate that the resale guidelines mentioned in §§ 8.1 and 8.2 exist or have been proposed by AT&T Texas. The Arbitrators note that provisions relating to nonpayment and procedures for disconnection are addressed in AT&T Texas's proposed section 13 of the General Terms and Conditions. Therefore, the Arbitrators adopt AT&T Texas's proposed language in §§ 8.1 and 8.2, which refers to the General Terms and Conditions for the procedures for discontinuance of service.* *The remainder of the sections proposed by AT&T Texas address suspension and restoration of service. The Arbitrators instead adopt section 21 relating to Suspension Services in Attachment 1: Resale in the CJP ICA because it was approved in Docket No. 28821.*
AT&T UNE-1	Should this Agreement implement the rules and regulations for Unbundled Network Elements in accordance with the FCC's orders?	UTEX Attachment 2 Business Enhancements UNEs, UTEX DAL Appendix 2 to Business Enhancements UNE,, Appendix 3 to Business Enhancement UNE: UNE Input/Output (I/O) Port, Simplified Message Desk Interface (SMDI), Stutter Dial Tone;	The following general observations apply to all of AT&T's UNE issues. In order to conserve space they will not be repeated in every cell, but they apply to every cell for AT&T's UNE issues. 1. Order 30 removed many, but not all of UTEX's "refresh" UNE terms even though they were prepared in a genuine and good faith attempt to eliminate UNEs as an issue in this case. AT&T objected to the refresh and insisted that UTEX's 2005 terms had to be used. Now, AT&T is sure to turn around and claim that the UTEX proposals AT&T insisted on seeing are deficient for a host of reasons, largely because of the *TRO* and *TRRO*. That is simply unfair. As a	Yes. The parties should incorporate terms and conditions for UNEs in accordance with applicable Law. AT&T's UNE Appendix is compliant to the latest FCC Orders. UTEX's proposal is not. In order to resolve all "UNE" issues efficiently, the Commission should require the parties to utilize the following Attachments from the CLEC Coalition (CC) agreement approved in Docket 28821: CC UNE Attachments 6, 6: Exhibit A, 6A Attachment A to Amendment: Appendix Wire Center Classification to Attachment 6 Appendix 251 (c)(3) Pricing Attachment and Schedule, Appendix 251(c)(3) Sub-Loop Elements, 7, 8, 18 and 19. These Attachments	*This issue is addressed in the text of the Award in the section titled "Unbundled Network Elements." For the reasons stated in the text of the Award, the Arbitrators conclude that it would be appropriate to adopt the UNE appendix in the Alpheus-AT&T ICA approved in Docket No. 25188. In addition, for reasons stated in the text of the Award, the Arbitrators adopt the following UNE-related attachments allowed by Order 30: 1) the Triennial Review Order (TRO)/Triennial Review Remand Order (TRRO) Rider, 2) the Wire Center Classification Rider, 3) Exhibit A-Appendix UNE containing the list of Commingled Arrangements from the Alpheus ICA, and 4)*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
		Appendix 1 to Business Enhancement UNE: White Pages; Attachment 2, Part 2, Enabling Function Unbundled Network Elements; Attachment 2, Part 1 Raw Material Unbundled Network Elements; Appendix 2 to Business Enhancement UNE: Mutual Exchange of Directory Listing Information, associated exhibits, any language that describes or contains terms and conditions for unbundling of elements or Unbundled Network Elements throughout the other UTEX attachments and all associated UTEX proposed pricing for the above listed attachments/appen	result, UTEX is adding in a UNE DPL issue cell that was contained in the Second Amended Petition. This addition appears at the end of AT&T's issues. 2. Order 30, however, allowed retention of the "refresh" *TRRO* Riders relating to Docket 30459 and 31303. Those Riders essentially say that any part of UTEX's 2005 proposals that is inconsistent with the *TRO* and *TRRO* are no longer in effect. If AT&T will point to specific parts of the 2005 proposals it believes are overruled, UTEX will consider the matter and reply. 3. UTEX observes that AT&T is still – even after Order 30 – "offering" to use the Docket 28821 CLEC Coalition UNE terms. If they can do that then UTEX still "offers" to use the Alpheus UNE terms with the CJP language regarding loops and subloops to a pole and for Small Volume Splice. 4. This case should stay on focus: the interconnection, intercarrier compensation and signaling, routing and rating of traffic to and from UTEX's non-carrier customers - matters that have never before been addressed in Texas. AT&T's decision to demand use of its generic terms for all other matters is patently designed to snarl up this case by injecting numerous issues that have already been previously litigated and disposed in the WCC case, the Alpheus arbitration and Docket 28821. UTEX is making every effort to eliminate all other issues so the Commission's attention can stay on the real	would replace all UTEX Attachments and Appendices related to its Business Enhancement UNE and any language that describes or contains terms and conditions for unbundling of elements or UNEs throughout the other UTEX attachments and all associated UTEX proposed pricing. If AT&T's proposed use of the CC documents is not accepted, AT&T alternatively sponsors its TRO/TRRO Compliant UNE Appendix WP and DAL language and all associated pricing.	*the Alpheus UNE Combinations Schedule taken from the EPN Agreement. With respect to the terms relating to loop and subloop to a NID on a pole and small volume splice that UTEX is seeking, the Arbitrators address these UNE terms under DPL issue AT&T UNE-19. Issues related to the pricing schedule for UNEs are addressed under DPL issues AT&T PR-1 and AT&T PR-2. In addition, the Arbitrators adopt ICA language in connection with specific UNE DPL issues below.*

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		dices. AT&T's proposed UNE Appendix; AT&T's proposed pricing for UNEs.	issue, the one that it expressly said it would not address in Docket 28821, and the issue the FCC told it to resolve under current law.		
AT&T UNE-2	a) Should AT&T be required to provide UTEX's proposed Business Enhancements "UNE", Enabling Functions "UNE" and Raw Materials "UNE"? b) Should the necessary and impair standards established by the FCC, be utilized when determining AT&T's 251 obligations?	UTEX (BEU, RMU, EFU) Throughout. AT&T: UNE Appendix 2.7.8 7.	See UTEX Position Statements for AT&T UNE 1 and UTEX UNE 1 *UTEX states that the Business Enhancements UNEs include white pages and stutter dial tone/message waiting indicator among other UNEs but it clarified that it is not actively pursuing stutter dial tone because it is no longer necessary to UTEX's business plans and that white pages do not have to be called a UNE and are addressed elsewhere in the ICA. UTEX Initial Br. at footnote 198 on page 179.*	*a)* No. These attachments are not consistent with FCC and court decisions. *AT&T Texas believes that the introduction of UTEX-created classifications for UNEs adds unnecessary jargon that can only confuse and lead to disputes over which network elements go into which category, and what significance the particular classification has in determining whether that network element must be offered as a UNE. AT&T Texas Ex. 9, Direct Testimony of Deborah Fuentes Niziolek ("Niziolek Direct"), at 39:18-22.* b) Yes. The Necessary and Impair "Standard" is a well established framework that cannot and should not be abandoned. *AT&T Texas cites paragraph 6 of the TRRO, in which the FCC concluded that FTA § 251(d)(2) authorized the FCC to determine which elements are subject to unbundling, based, at a minimum, on whether access to proprietary network elements is "necessary," and whether failure to provide a non-proprietary element on an unbundled basis would "impair" a requesting carrier's ability to provide service. According to AT&T Texas, the D.C. Circuit Court held that state commissions may not determine*	*(a)-(b) The Arbitrators decline to adopt the three categories of UNEs proposed by UTEX because they are confusing and also unnecessary for UTEX to gain access to UNEs that it is entitled to under FCC rules. The Arbitrators note that FCC Rules §§ 51.307 through 51.321 delineate the standards under which the FCC may require the unbundling of network elements as well as the specific unbundling requirements and obligations imposed by the FCC on an ILEC such as AT&T Texas. The Arbitrators find that the FCC rules do not classify UNEs in the manner proposed by UTEX. Furthermore, UTEX's proposed classification of UNEs is a moot issue, considering that the Arbitrators have accepted UTEX's proposal regarding the use of UNE terms from the Alpheus-AT&T ICA, as discussed under DPL issue AT&T UNE-1 above. The Arbitrators note that UTEX's proposed classification for UNEs does not appear in the Alpheus-AT&T ICA.*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
				which network elements qualify as UNEs. AT&T claims, without providing specific citations, that the Commission also recognized in Docket Nos. 28821 and 30459 the FCC's sole authority to designate UNEs, with guidance from the courts. AT&T Texas asserts that the Commission is without authority to recognize the new UNE categories UTEX proposes. AT&T Texas Exhibit 9, Niziolek Direct, at 39:9-41:5; AT&T Texas Initial Br. at 45.	
AT&T UNE-3	Should this agreement contain terms and conditions that perpetuate expired Merger Condition requirements?		See UTEX Position Statements for AT&T UNE 1 and UTEX UNE 1.	AT&T believes this issue has been withdrawn by UTEX. If that is not the case then AT&T offers the following: No. The AT&T/Ameritech Merger Conditions have expired pursuant to their own terms.	*Given that the AT&T-Ameritech Merger Conditions have expired pursuant to their own terms, the Arbitrators conclude that the ICA need not contain terms and conditions that perpetuate the Merger Condition requirements.* *The Arbitrators further note that the parties have not identified contract language to which this issue relates.*
AT&T UNE-4	Does the PUC have authority to arbitrate § 271 terms that were not voluntarily negotiated and do not address a 251(b) or (c) obligation?		See UTEX Position Statements for AT&T UNE 1 and UTEX UNE 1.	AT&T believes this issue has been withdrawn by UTEX. If that is not the case then AT&T offers the following: No. *See* 47 CFR § 252(b). *In addition, AT&T cites the Commission's decision on page 18 of the Arbitration Award, Track II issues in Docket No. 28821 in which the Commission declined to include terms and conditions in the ICA for provisioning of UNEs under FTA § 271 because the FTA provided no specific authorization for the Commission to arbitrate § 271 issues. States are given only a consulting role in the § 271 application/approval process. AT&T Texas Ex. 9, Niziolek Direct, at 41:17-42:8.*	*Consistent with the Commission's decision in Docket No. 28821, the Arbitrators conclude that the Commission does not have the authority to arbitrate § 271 terms that were not voluntarily negotiated and do not address a § 251(b) or (c) obligation.* *The Arbitrators further note that the parties have not identified contract language to which this issue relates.*

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AT&T UNE-5	WITHDRAWN				
AT&T UNE-6	~~a)~~ Should the ICA contain clear, specific terms and conditions for "Declassification" ?	UTEX (BEU part 3, 5.0, 5.1, 5.2, 6.2) AT&T (2.1 – 2.5.3) UTEX: Appendix 3 to Business EnhancementUNE: UNE Input/Output (I/O) Port, Simplified Message Desk Interface (SMDI), Stutter DialTone Appendix 1 to Business Enhancement UNE: White Pages; Attachment 2, Part 2, Appendix 2 to Business Enhancement UNE: Mutual Exchange of Directory Listing Information	See UTEX Position Statements for AT&T UNE 1 and UTEX UNE 1.	a) Yes. AT&T's Declassification language provides a listing of Declassified elements and a detailed transition process so that the parties have a clear understanding of how Declassification will be handled.	*The Arbitrators do not find it necessary to adopt AT&T's proposed language because the TRO/TRRO Remand Order Rider and the Wire Center Classification Rider allowed by Order No. 30 and adopted by the Arbitrators under DPL issue AT&T UNE-1 include appropriate language regarding declassified elements and provide a transition process for future declassifications. Those riders ensure that any UNE terms that are inconsistent with the TRO/TRRO are not in effect.*
AT&T UNE-7	a) Should the agreement require AT&T to provide	AT&T (2.15 – 3.3.8.2);	See UTEX Position Statement for UNE 1 and UTEX UNE 1. UTEX's proposed UNE terms only require access to and combination of UNEs	a) No. AT&T's obligations to provide UNEs are limited by FCC UNE rules and orders (e.g., technical feasibility, doesn't undermine others'	*(a)-(b) The Arbitrators find that the ICA should address only access to and combinations of UNEs where required or allowed by applicable*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
	access to and/or combine UNEs without regard to applicable law? b) Should AT&T be obligated to provide declassified elements (such as OCN loops/subloops, entrance facilities, dark fiber etc.) or combinations involving declassified elements?	UTEX RMU (2.1-2.5.2) EFU (2.0, 4.0-4.1, 5.2-5.3.2.4)	where required or allowed by applicable law. UTEX is not requesting any declassified elements. UTEX does propose terms that allow it to connect a UNE to elements that UTEX self-provides or that are provided by other carriers or are obtained from AT&T at wholesale.	ability to interconnect or access UNEs), by *Verizon Comm. Inc. v. FCC*, 535 U.S. 467(May 13, 2002) (various limitations on an ILEC's obligation to combine UNEs), and by the FCC's mandatory eligibility criteria for certain EELs, among other things. Those limitations apply to UTEX's ability to order UNEs; UTEX does not escape those limitations because it does the combining. UTEX's proposal is inconsistent with governing law. b) No. AT&T should not be obligated to provide combinations involving declassified elements.	*law. The Arbitrators do not find it necessary to adopt AT&T's proposed language because the UNE language adopted by the Arbitrators under DPL issue AT&T UNE-1 contains language that will allow access to and combinations of UNEs where required or allowed by applicable law. The Arbitrators note that the TRO/TRRO Remand Order Rider (allowed by Order No. 30) and adopted by the Arbitrators under DPL issue AT&T UNE-1 will ensure that AT&T Texas is not required to provide declassified network elements or combinations involving only declassified network elements. The Arbitrators address under DPL issue AT&T UNE-8, the issues of permitting UTEX to combine UNEs with elements that UTEX self-supplies or obtains from a third party or elements that are obtained from AT&T at wholesale.*
AT&T UNE-8	a) Should the agreement contain terms and conditions for the methods by which UTEX can access UNEs and perform its own combinations? b) Should UTEX be allowed to have direct access to AT&T's distribution frames?	UTEX: RMU 2.2, 2.4, 2.4.1, 2.5 EFU 3.2.1, 4.1, 5.1 AT&T: 2.15-3.3.8.2, Appendix Physical Collocation, Appendix Virtual Collocation	(a) See UTEX Position Statements for UNE 1 and UTEX UNE 1. (b) If AT&T will provide any cross-connection between a UNE and other network elements on the terms the Commission has already approved, then UTEX does not need direct access to AT&T's distribution frame. If AT&T will not do the work, however, then UTEX must have the right to do what it needs to do to obtain access to UNEs and cross-connect to other network elements. The Act requires no less. *UTEX asserts that AT&T's position requiring any connection between a UNE and an alternatively-supplied element to occur only in collocation is neither lawful nor*	a) Yes. AT&T has proposed language in Appendix Physical Collocation, Appendix Virtual Collocation and the Interconnection Appendices to address access to UNEs. The FCC held in the TRRO that CLECs were not impaired without the UNE-P product and UNE-P is no longer available. AT&T has proposed language for methods of access to UNEs. AT&T's methods of access provide access to UNEs without compromising the security, integrity, and reliability of the public switched network and will minimize potential service disruptions. b) No. AT&T is not required to provide access to distribution frames under current law. UTEX's proposal for unbridled access to the	*(a)-(b) The Arbitrators conclude that the ICA should contain terms and conditions for methods by which UTEX can access UNEs and perform its own combinations. However, the Arbitrators find that such methods of access should not compromise the security, reliability, and integrity of AT&T Texas's network. Therefore, the Arbitrators decline to require AT&T Texas to provide UTEX access to its Main Distribution Frame.* *The Arbitrators find that the three methods of access proposed by AT&T Texas in section 3 of AT&T Texas's Lawful UNE appendix for UTEX to perform its own combinations to be reasonable and therefore adopt AT&T Texas's proposed language in section 3 of AT&T*

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			reasonable. UTEX states that while AT&T witness Hatch acknowledges that collocation is not the only way the connection may be made, AT&T has failed to propose any alternative way for such connections to be made. UTEX cites portions of the FCC decision in Application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana, which, UTEX claims, held that an ILEC cannot require a competitor to access UNEs only through collocation. In addition, UTEX contends that 47 C.F.R. § 51.315(d) and (e) require an ILEC to perform functions necessary to UNEs with elements possessed by the CLEC in any technically feasible manner and an ILEC can deny a request to combine elements only if it can prove to the state commission that the requested combination is not technically feasible. AT&T terms that limit UTEX's ability to combine UNEs with elements possessed or obtained by UTEX only inside a collocation cage is in violation of the rule, according to UTEX. Further, UTEX claims that 47 C.F.R. § 51.321(a) and (b)(2) and § 51.5 permit the use of "meet point" as an option to access UNEs and specifically to connect UNEs to UTEX's network. UTEX points out that AT&T did not assert or show that UTEX's meet-point terms are not technically feasible pursuant to 47 C.F.R. §51.321(d). In addition to the UNE combination attachment from the Alpheus-AT&T ICA, UTEX states that its terms	network jeopardizes security, public safety, maintenance and dependability and would discriminatorily favor UTEX to the detriment of AT&T and all other carriers on AT&T's network. AT&T's proposed language in Appendix Physical, Appendix Virtual and the Interconnection Appendices should be accepted. *AT&T Texas agrees that the ICA needs to contain terms and conditions for methods of accessing UNEs, as well as processes for CLECs to do their own combining. AT&T Texas stated that its proposed language would not deny UTEX the ability to do its own combinations within its collocation cage by contracting with any AT&T Texas Tier 1 or Tier 2 approved vendors if AT&T Texas cannot complete the combination. Furthermore, AT&T Texas states that its proposed language contemplates that AT&T Texas would perform combinations for UTEX outside of UTEX's collocation cage in a virtual collocation arrangement. However, AT&T Texas argues that it is not required to provide access to its Main Distribution Frame ("MDF") other than to transit cross-connects on the frame to UTEX's Physical or Virtual Collocation cage or area. AT&T Texas strongly disagrees with UTEX's argument that requesting carriers are entitled to request any "technically feasible" method of access without regard to AT&T's need to protect the security of its network. AT&T Texas cites decisions by the FCC and Supreme Court that conclude that threats to network reliability and security were*	*Texas's Lawful UNE appendix. The three proposed methods would permit UTEX to perform its own combinations in the following areas: 1) in its physical or virtual collocation space, 2) in the common room space other than the collocation common areas within the central office, and 3) in a closure such as a cabinet provided by AT&T Texas on AT&T Texas's property if UTEX's UNE frame is located outside the AT&T Texas central office where the UNEs are to be combined.* *In addition, the Arbitrators conclude that UTEX has the option to request AT&T Texas to perform the combination between a UNE and an alternately-supplied element. The Arbitrators note that FCC Rule 51.315(d) requires an ILEC to perform, upon request, the functions necessary to combine UNEs with elements possessed by a requesting telecommunications carrier in a technically feasible manner and an ILEC that denies a combination request must prove to the state commission that the requested combination is not technically feasible. The Arbitrators interpret "elements possessed by a requesting telecommunications carrier" to include network elements owned or self-supplied by UTEX and network elements obtained by UTEX from a third party carrier. The Arbitrators note that the Commission has approved language in Docket No. 28821 in the CJP-AT&T ICA that addresses this type of combination. Section 2.2 of the CJP-AT&T Texas ICA states:*

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			relating to access to UNE when a UNE is connected to alternatively-supplied network elements must be approved. UTEX Initial Br. at 182-183 and 187-189.	*important considerations in evaluating technical feasibility of interconnection or access to ILEC networks. Furthermore, AT&T Texas notes that this Commission has not condoned CLEC direct access to AT&T Texas's distribution frame. AT&T Initial Br. at 48; AT&T Ex. 14, Rebuttal Testimony of Hatch ("Hatch Rebuttal") at 5:4-7:9; AT&T Ex. 10, Rebuttal Testimony of Deborah Fuentes Niziolek ("Niziolek Rebuttal"), at 20:1-13.*	*"SBC TEXAS will permit CLEC to designate any point at which it wishes to connect CLEC's facilities or facilities provided by a third party on behalf of CLEC with SBC TEXAS' network for access to unbundled Network Elements for the provision by CLEC of a telecommunications service. If the point designated by CLEC is technically feasible, SBC TEXAS will make the requested connection."* *The Arbitrators find that in the event AT&T denies a combination request from UTEX, AT&T Texas should provide written notice of its denial and the parties may address any disputes using the Commission rules for dispute resolution. The following language should be incorporated in the ICA:* *"In the event that AT&T Texas denies a request to perform the functions necessary to combine UNEs with elements possessed by CLEC or provided by a third party on behalf of CLEC, AT&T Texas shall provide written notice to CLEC of such denial and the basis thereof. Any dispute over such denial shall be addressed using the dispute resolution procedures outlined in the Public Utility Commission of Texas Rules. In any dispute resolution proceeding, AT&T Texas shall have the burden to prove that such denial meets one or more applicable standards for denial, including without limitation those under the FCC rules and orders, Verizon Comm. Inc. v. FCC, 535 U.S. 467 (2002), and the Agreement."*

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					In summary, the Arbitrators generally adopt AT&T Texas's proposed language in section 3 of the Appendix Lawful UNEs (the term "Lawful UNEs" shall be replaced by "251(c)(3) UNEs," consistent with the Commission's decision in Docket No. 28821 as discussed under DPL Issue AT&T UNE-13), the language in section 2.2 of CJP ICA outlined above, and the language delineated above regarding the process of addressing disputes in the event AT&T Texas denies a combination request. *With respect to the connection of a UNE or a combination of UNEs to any one or more facilities or services obtained by UTEX at wholesale from AT&T Texas, the Arbitrators note that these connections are addressed under section 10 of the TRO-TRRO Rider (Commingling, Conversions, and Combinations). Furthermore, the Arbitrators note that the TRO/TRRO Order Rider (allowed by Order 30) has been adopted by the Arbitrators under DPL Issue AT&T UNE-1 above. Therefore, the connection of a UNE or a combination of UNEs to any one or more facilities or services obtained by UTEX at wholesale from AT&T Texas is addressed in the UNE language adopted by the Arbitrators under DPL issue AT&T UNE-1, above.*
AT&T UNE-9	Must UTEX use UNEs to provide Telecommunication Services in accordance with the FTA?	UTEX RMU 2.4.1 AT&T 2.6	UTEX's proposed terms already recognize that UNEs are available so that UTEX can provide Telecommunications Service. Of course, UTEX can also use a UNE to provide other services as well, so long as it is providing a Telecommunications Service.	Yes. UTEX's proposed language disregards this obligation at UTEX RMU 2.4.1. UTEX's language states: "If UTEX is providing a telecommunications service using the UNE, UTEX may also provide information or other services with that UNE." The FTA requires ILECs to provide UNEs to a requesting	*FCC rule § 51.00 (b) states that "a telecommunications carrier that has interconnected or gained access under sections 251 (a)(1), 251(c)(2), or 251(c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering telecommunications services through the same*

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			UTEX cites FCC rule §51.100(b) as support for its position that it is allowed to use UNEs to provide other services as long as it is also providing a telecommunications service. UTEX Initial Br. at 189.	telecommunications carrier for the "provision of a telecommunications service." The FTA defines "Telecommunications Service" as the "offering of telecommunications for a fee *directly to the public*, or to such classes of users as to be effectively available directly to the public." UTEX may not use UNEs to provide service to itself or to its affiliates. *AT&T Texas contends that UTEX's reliance on 47 C.F.R. § 51.100(b) is misplaced and its proposed language is overbroad, noting that that rule includes no reference to UTEX's vague and undefined term "other services." AT&T Texas Reply Br. at 65.*	*arrangement as well." Access to UNEs is addressed in § 251(c)(3) of the Act. The Arbitrators conclude that FCC Rule 51.100(b) permits a telecommunications carrier such as UTEX that has interconnected or gained access under FTA §§ 251(a)(1), 251(c)(2), and 251(c)(3) of the Act, to offer information services using a UNE, so long as it is also offering telecommunications services using the UNE. However, the Arbitrators note that the reference in FCC Rule 51.00(b) is limited to the provision of "information services" rather than the broad term "other services" proposed by UTEX. The Arbitrators decline to adopt the language proposed by both parties for this issue and instead adopt the following language consistent with FCC Rule 51.100(b):* *"UTEX may offer information services using a UNE so long as it offers telecommunications services using that UNE."*
AT&T UNE-10	WITHDRAWN				
AT&T UNE-11	Is UTEX entitled to direct access to AT&T's back office systems, access terminals, central offices and distribution frames in order to perform its own combinations?	UTEX RMU 5.3 AT&T xDSL 5.0	See UTEX Position Statements for AT&T UNE 1, AT&T UNE 8 and UTEX UNE 1.	No. AT&T's obligation to provide loop qualification information is limited to what is readily available to AT&T. To the extent UTEX's language obligates AT&T to provide such information all of the time, it is inconsistent with the TRO, in which the FCC stated that ILECs "do not need to provide direct access to back office systems." Per the FCC, an ILEC "may satisfy its obligations with respect to loop qualification information by providing carriers	*The Arbitrators adopt the language proposed by AT&T Texas. AT&T Texas's proposed language is very similar to the contract language in Section 5.0 of the xDSL attachment in the CLEC Coalition/AT&T ICA relating to Operational Support System: Loop Make-Up Information and Ordering. The language in the CLEC Coalition-AT&T Texas ICA was approved by the Commission in Docket No. 28821. Adoption of AT&T Texas's language*

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				with the same underlying information that it has in any of its own databases or internal records without offering direct access to those records," and an ILEC is "not required to permit [CLECs] direct access to its back office loop qualification database." *AT&T Texas states that loop qualification information is available either by electronic or manual means and if UTEX believes that the data provided by a mechanized loop qualification is incorrect, it has the option of requesting a manual loop qualification. AT&T Texas contends that it has never provided access to its access terminals or distribution frames for any CLEC for any purpose because such access would place the security of AT&T Texas' facilities at unreasonable risk. AT&T Ex. 13, Direct Testimony of Richard R. Hatch ("Hatch Direct"), at 10:16-11:26.*	*would ensure that UTEX has the same access to operational support systems for xDSL loops as is available to other CLECs.*
AT&T UNE-12	Should the Agreement be consistent with the language set up by the FCC in 47 CFR § 51.325 regarding network disclosure?	UTEX RMU 2.10 AT&T 2.13.2,	See UTEX Position Statements for AT&T UNE 1 and UTEX UNE 1	Yes. AT&T's language is consistent with federal law and FCC rules for Network Disclosures regarding notice of network changes and retirement of copper loops and/or copper subloops. *See* FCC's TRO, ¶¶ 281- 84, 47 C.F.R. § 51.325-335. UTEX's language is not.	*The Arbitrators adopt AT&T Texas's proposed contract language with modifications (shown as redlined changes below) so that the language is consistent with the contract language approved by the Commission in Docket 28821 for the CLEC Coalition-AT&T ICA.* *"Nothing in this ~~Appendix~~ Agreement will limit either Party's ability to modify its network through the incorporation of new equipment, new software or otherwise. Each Party will provide the other Party written notice of any such changes in its network which ~~will~~ could reasonably be expected to materially impact the other Party's service consistent with the timelines and guidelines*

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					established by 47 CFR Sections 51:325-335."
AT&T UNE-13	Should the Agreement provide that AT&T will provision UNEs in accordance with its technical publications as amended from time to time?	AT&T 2.13.1	See UTEX Position Statements for AT&T UNE 1 and UTEX UNE 1	Yes. AT&T's technical publications are necessary to understand AT&T's processes and network information. If a change to AT&T's technical publications is needed as a result of a change in its network that rises to the level of filing a network disclosure (see AT&T UNE-5 issue above), AT&T makes a public notification before doing so.	*AT&T Texas's proposed language states:* *"Each Lawful UNE will be provided in accordance with AT&T Technical Publications or other written descriptions, if any, as changed from time to time by AT&T at its sole discretion."* *The Arbitrators do not adopt the ICA language as proposed by AT&T Texas for the following reasons. First, in Docket No. 28821 the Commission did not adopt the use of the term "Lawful " to qualify UNEs provided pursuant to FTA § 251(c)(3) because it concluded that the term could cause significant confusion by implying that UNEs requested under a section of the FTA other than 251(c)(3) could be "illegal." (Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement, Docket No. 28821, Arbitration Award – Track 1I Issues, at page 17 (June 17, 2005)). Consistent with the Commission's decision in Docket No. 28821, the Arbitrators use the term "251(c)(3) UNE" to distinguish such UNEs from "declassified" UNEs, which are available pursuant to FTA § 271. Second, the Arbitrators find that permitting AT&T Texas to provide UNEs in accordance with technical publications or other written descriptions that AT&T Texas can change at any time at its sole discretion gives AT&T Texas undue and unreasonable latitude.* *The Arbitrators note that this issue is addressed in § 8.1 of the UNE appendix in*

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					the Alpheus ICA adopted under DPL issue AT&T UNE-1, above. However, that section permits AT&T Texas to change the technical publications in accordance with the relevant provisions contained in the General Terms and Conditions of the Alpheus ICA. Given that the Arbitrators have not adopted the General Terms and Conditions of the Alpheus ICA, the Arbitrators conclude that § 8.1 of the UNE appendix in the Alpheus ICA should be replaced with the following ICA language, which was approved by the Commission in Docket No. 28821 for the CLEC Coalition ICA. References to SBC Texas in the original ICA have been changed to AT&T Texas. *"Each 251(c)(3) UNE will be provided in accordance with AT&T Texas Technical Publications or other written descriptions, as approved by the Texas Commission. AT&T TEXAS will file its Technical Publications with the Commission and such Technical Publications will be deemed approved within ten (10) business days of filing unless suspended by the Commission. If a Technical Publication is suspended, the Commission shall approve the Technical Publication or deny approval for good cause within forty-five (45) days of filing. Further, changes may be made from time to time by joint agreement of AT&T Texas and the affected CLEC, and where CLEC agreement cannot be obtained, as changed with the approval of the Texas Commission. Such publications will be shared with CLEC.*

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					AT&T Texas will provide an AT&T Texas Technical Publication or other written description for each 251(c)(3) UNE offered under this Agreement. The Technical Publication or other description for a 251(c)(3) UNE will describe the features, functions, and capabilities provided by the Unbundled Network Element as of the time the document is provided to CLEC. No specific form for the Technical Publication or description is required, so long as it contains a reasonably complete and specific description of the 251(c)(3) UNE's capabilities. The Technical Publication or other description may be accompanied by reference to vendor equipment and software specifications applicable to the Unbundled Network Element. *For each 251(c)(3) UNE provided for in this Attachment, AT&T Texas Technical Publications or other written descriptions meeting the requirements of this Section will be made available to CLEC not later than thirty (30) days after the Effective Date of this Agreement."*
AT&T UNE-14	Is it reasonable to include terms and conditions on the maintenance of the Party's networks?	AT&T (2.13.3-2.13.4); UTEX RMU 2.10, 2.12, 2.13	See UTEX Position Statements for AT&T UNE 1 and UTEX UNE 1	Yes. AT&T' must update and maintain its network for the benefit of AT&T, UTEX, other carriers and all End Users on AT&T's network. AT&T's language provides clarity and sets the expectations of both Parties during such conversions.	*The Arbitrators do not adopt AT&T Texas's proposed language for § 2.13.3 because it is ambiguous with respect to the number of days that orders from a CLEC may be suspended prior to the date of any conversion or upgrades that AT&T Texas may conduct. The Arbitrators note that § 8.3 in the UNE appendix in the Alpheus ICA adopted under DPL issue AT&T UNE-1 above addresses the*

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					conversions that AT&T Texas may conduct for the improvement of its network. The Arbitrators modify §8.3 in the UNE appendix in the Alpheus ICA to also include upgrades to AT&T Texas's network. *The Arbitrators, therefore, adopt the following ICA language to replace § 8.3 in the UNE appendix in the Alpheus ICA:* *"AT&T Texas may elect to conduct ~~central office switch~~ upgrades or conversions for the improvement of its network or systems. During such upgrades or conversions, CLEC orders for Unbundled Network Elements from ~~that switch~~ affected wire center(s) may ~~shall~~ be suspended for a period of three days prior and one day after the upgrade or conversion date, consistent with the suspension AT&T Texas places on itself for orders from its ~~customers~~ End Users."* *The Arbitrators adopt AT&T Texas's proposed contract language for section 2.13.4 and note that it is consistent with contract language in the CLEC Coalition-AT&T ICA approved in Docket No. 28821.*
AT&T UNE-15	Should the agreement contain provisions regarding the parties' responsibilities for maintenance and proper	AT&T 19- 19.5;	See UTEX Position Statements for AT&T UNE 1 and UTEX UNE 1	Yes. Maintenance is key to the network's sustainability. A variety of CLECs and Carriers use the PSTN in order to serve many End Users. The agreement should impose appropriate conditions and requirements on UTEX's use of the network so as to allow smooth maintenance, upgrading and day to day operations of the network for the benefit of all users.	*The Arbitrators do not find it necessary to adopt AT&T Texas's proposed language for §§ 19-19.5 because these provisions are addressed in the UNE Appendix in the Alpheus ICA adopted by the Arbitrators under DPL issue AT&T UNE-1, above. Specifically, AT&T Texas's proposed terms are addressed in §§ 5.1, 5.2, 5.3.7, 5.3.10, and*

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	functioning of the network?				*5.3.12 of the UNE appendix in the Alpheus ICA.*
AT&T UNE-16	a) Are the Performance Measures ("PMs") developed in collaborative sessions with the Texas CLEC community appropriate for inclusion in parties' Agreement? b) Should the PUC order liquidated damages beyond the Remedy Plan that is associated with the PMs found in the Agreement and that AT&T is willing to make available to UTEX?	UTEX RMU (2.14 – 2.18), AT&T PM Appendices	At some point the PUC will admit that its performance standards and measurements are useless and worthless, and they do not adequately compensate CLECs for breaches by AT&T of ICA terms; instead AT&T uses them as a sword and regularly abuses the purpose and intent. Indeed, AT&T likely has committed massive fraud on the tribunal and has cheated both CLECs and the state out of massive amounts of funds that should have been paid. Nonetheless, UTEX is willing – in the interest of keeping the focus on interconnection and traffic exchange – to largely accept the PMs approved by the Commission in its various dockets, including Docket 28821. There are three important things to remember. First, AT&T is not proposing to use the T2A or T2A2 PMs or remedies. AT&T's proposed terms come from its generic, and are different. The Commission has not substantively reviewed these terms under § 252(c) or (e)(2)(B). Second, AT&T's PMs simply do not address several UNEs. AT&T has already made it quite clear that it thinks it can breach the ICA with absolute impunity when the PMs do not provide an express remedy for a specific topic. That is simply wrong. UTEX has proposed Liquidated Damages for those areas where PMs – whether AT&T's or "T2A" – do not have a measurement and remedy. Those targeted provisions should be approved.	a) Yes. The PUC directed the parties to the T2A successor docket to discuss an alternative to the T2A performance measures plan and to attempt to reduce the number of measures. The parties returned to the PUC with only four disputed issues, which the PUC resolved. The resulting performance measures plan was included in all replacement T2A agreements. See Performance Measures/Liquidated Damages DPL, b) No. The PMs adequately address performances requirements for AT&T. The Remedy Plan negotiated with the CLECs in Docket 28821 provides appropriate compensation for failure to meet those PMs. AT&T is willing to make that Remedy Plan available to UTEX. A separate liquidated damages provision for UTEX is unreasonable and unjustified.	*This issue is addressed in the text of the Award in the section titled "Performance Measures and Liquidated Damages."*
AT&T	a) Should cross-	UTEX EFU(5.0 –	See UTEX Position Statements for AT&T UNE	a) No. The FCC has never defined cross	*(a)-(c) Consistent with the Commission's*

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UNE-17	connects be considered a UNE? b) When are cross-connects provisioned to CLECs under an Interconnection Agreement? c) Should terms and conditions be clearly defined regarding "cross connects"?	5.2); AT&T (18.1 – 18.8.3)	1 and UTEX UNE 1 *In addition to cross-connects that connect two AT&T Texas-supplied UNEs or connect an AT&T Texas-supplied UNE with an AT&T Texas-supplied special access circuit, UTEX requests contract terms that address the provision of cross-connects that connect an AT&T Texas-supplied UNE to a network element UTEX self-supplies or obtains from another carrier like Alpheus. UTEX states that its 2005 terms address all three kinds of cross connects in Raw Materials UNEs §§2.1-2.5.1. Initial Brief of UTEX at 182.* *UTEX asserts that its proposed lists of cross-connects in its Attachment 2, Part Enabling UNEs is very similar to Alpheus cross-connects listed in Alpheus UNE Combinations Schedule. Initial Brief of UTEX at footnote 197 on page 179.*	connects to be UNEs. b) AT&T provides cross-connects when ordered with an associated UNE. Cross connects are not a stand-alone product *but rather are provided only for the purpose of permitting CLECs to connect AT&T Texas's UNEs to other UNEs or to the CLEC's own facilities. AT&T Texas Ex. 13, Hatch Direct, at 15:17-18;16:11-14.* c) Yes. UTEX use of the term "cross-connect" is confusing. UTEX uses the term as both a verb (the act of connecting) and a noun (the physical media). AT&T properly uses the term cross connect as only a noun. UTEX's dual use confuses two different subjects: (1) the terms and conditions applicable to the physical media AT&T uses in providing UNEs, and (2) the terms and conditions governing the activities of (a) connecting UNEs to UNEs and UNEs to elements possessed by UTEX (UNE combining) and connecting UNEs to AT&T's wholesale services/facilities purchased by UTEX (commingling). To avoid confusion, these two subjects should remain apart as AT&T has proposed, dealing with the Ts and Cs for the physical media here. Because there are important differences between UNE combining and commingling, AT&T has language addressing those subjects in which AT&T clearly describes the "verb" use of cross connects. *AT&T Texas expressed concern that UTEX's language would require AT&T Texas to provide whatever cross-connect UTEX requests, regardless of whether they*	*decision in Docket No. 28821, the Arbitrators conclude that UTEX is entitled to cross-connects at TELRIC rates for connections between FTA § 251(c)(3) UNEs and network elements self-supplied by UTEX or obtained by UTEX from another carrier. In Docket No. 28821, based on the FCC finding that CLECs are entitled to cost-based rates for interconnection facilities, the Commission determined that cross-connects must be provided at TELRIC-based prices for connections between FTA § 251(c)(3) UNEs and any non-251(c)(3) element or wholesale facility or service obtained from AT&T Texas. (Docket No. 28821, Arbitration Award – Track 1I Issues, at pages 22-23 (June 17, 2005)). The Arbitrators conclude that whether a cross-connect is used to 1) connect two AT&T Texas-supplied UNEs, 2) connect an AT&T Texas-supplied UNE with an AT&T Texas supplied special access circuit, or 3) connect an AT&T Texas-supplied UNE to a network element UTEX self-supplies or obtains from another carrier like Alpheus, the cross-connect is being used in conjunction with an FTA § 251 (c)(3) UNE and therefore should be provided by AT&T Texas at TELRIC rates. Furthermore, the Arbitrators find that requiring AT&T Texas to provide cross-connects at TELRIC prices that connect an AT&T Texas-supplied UNE to a network element that UTEX self-supplies or obtains from another carrier is consistent with FCC Rule 51.315(d), which requires an ILEC to perform, upon request, the functions necessary to combine UNEs with elements*

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				correspond to FTA § 251(c)(3). AT&T asserts that its proposed contract language provides a list of those cross-connects that are required UNEs under the FCC's rules, while UTEX's list goes far beyond any applicable legal requirements. If UTEX needs a cross-connect that is not listed in AT&T's proposed language, UTEX can request it through the BFR process, according to AT&T Texas. AT&T Ex. 9, Niziolek Direct, at 48:5-19.	*possessed by a requesting telecommunications carrier in a technically feasible manner. The Arbitrators interpret "elements possessed by a requesting telecommunications carrier" to include network elements owned or self-supplied by UTEX and network elements obtained by UTEX from a third party carrier.* *The Arbitrators note that the provision of cross-connects by AT&T Texas for access to UNEs is addressed in § 20 of the UNE Appendix in the Alpheus ICA adopted by the Arbitrators under DPL issue AT&T UNE-1, above.* *The Arbitrators find that it is necessary to include language in the ICA to address the situation where UTEX is interested in combining UNEs with the network elements obtained from a third party carrier at the latter's collocation arrangement. The Arbitrators direct the parties to include the following language from §2.6.1 of the CJP-AT&T ICA:* *"Notwithstanding any other provision of this Agreement, CLEC may order UNEs to terminate at the collocation arrangement of another CLEC, whether those facilities are UNEs or otherwise, provided that CLEC has a proper Letter of Authorization (LOA) from the other CLEC and the necessary information to complete a Local Service Request (LSR), e.g., CFA information."*

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AT&T UNE-18	Should UTEX be required to use the same ordering forms and follow the same guidelines that the CLEC community utilizes in placing orders/requesting services from AT&T?	UTEX (EFU 3.0-3.3.2) AT&T OSS Appendix	AT&T is mischaracterizing UTEX's ordering and UNE proposals. UTEX will use a form, process or guideline for pre-ordering, ordering or provisioning if that form, process or guideline actually allows UTEX to pre-order, order or obtain provisioning. AT&T, however, strategically uses these processes to delay, deny, overcharge or obstruct access to UNEs it does not like. Dark fiber, sub-loops and loops to a pole are a few examples. UTEX has proposed a process or a form to pre-order, order or secure provisioning of a UNE where AT&T has chosen to not provide one. Those UTEX terms should be approved.	Yes. See OSS DPL	*This DPL issue is addressed in the text of the Award in the section titled "OSS and Ordering."*
AT&T UNE-19	What are the appropriate terms and conditions in which AT&T must provision NIDs?	UTEX (RMU 3.0-3.7) AT&T (7-7.9)	See UTEX Position Statements for AT&T UNE 1 and UTEX UNE 1 *UTEX states that its Raw Material UNE terms in its 2005 petition had provisions relating to "Loop to Network Interface Device on Pole," "Subloop to Network Interface Device on Pole," and "Small Volume Splice". UTEX states that Raw Material UNEs §§ 3.3, 5.5.1, and 6.3 address loop and subloop to NID on pole and Raw Material UNE §§ 5.5.2, 5.5.3, 5.5.4, 5.5.5, 5.5.8, and 6.1 address small volume splice and Subloop Interface Device (SID) equivalent. UTEX states that these terms came from the Posner Agreement, which was replaced by the terms in the ICA between CLEC Joint Petitioners (CJP) and AT&T in Docket No. 28821. UTEX noted that the ICA in Docket No. 28821 included language regarding "Radio Port" as well as other*	AT&T proposed language compliant with FCC orders. UTEX's language lacks specificity, inappropriately expands AT&T's obligations, and is inconsistent with controlling FCC orders. AT&T's language should be adopted. *AT&T explains that the NID is any means of interconnecting the ILEC's loop distribution plant to wiring at a customer's premises and that an ILEC is required to permit a requesting carrier to connect its loop facilities through the incumbent LEC's NID. AT&T Texas' proposed language defines a NID as any means of interconnection of End User's Premises wiring at AT&T Texas' distribution loop facilities, such as a cross-connect used for the purpose of establishing the final network demarcation point between the loop and the End user's inside wire. AT&T Ex. No. 13, Hatch Direct at 16:23-17:11.* *AT&T Texas argues that UTEX's proposed*	*The Arbitrators agree with AT&T Texas that the provisions relating to NID should conform to the FCC rules. However, the Arbitrators do not adopt the language proposed by AT&T Texas because the UNE terms adopted by the Arbitrators under DPL issue AT&T UNE-1 include language on NID that conforms to current FCC rules and are, therefore, compliant with the TRO/TRRO.* *With respect to the UNE terms for "Loop to Network Interface Device on Pole," "Subloop to Network Interface Device on Pole," and "Small Volume Splice," the Arbitrators find that these UNE terms were addressed by UTEX's proposed language in its 2005 petition. Given that UTEX is seeking the adoption of contract language for these terms that has already been approved by the Commission in Docket No. 28821 for the CJP-AT&T ICA, the Arbitrators conclude*

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			terms that revised the original terms in the Posner Agreement. UTEX contended that AT&T has no legal basis for opposing approval of the terms on Loop to NID on Pole, Subloop to NID on Pole, and Small Volume Splice because these terms were addressed in UTEX's 2005 petition, and its 2010 "refresh" UNE terms merely used the same words as they currently appear in the Commission-approved ICAs for CJP. UTEX *Initial Br. at 179-180.*	*language governing "Loop to NID on Pole," "Subloop to NID on Pole" and "Small Volume Splice" are barred by Order No. 30. AT&T states that once the ICA is approved and in effect, however, UTEX may request these items pursuant to the Bona Fide Request (BFR) process in the ICA. AT&T Texas has established the BFR process as the means by which a CLEC can request the creation of a new UNE. AT&T Texas Reply Br. at 63 and AT&T Ex. 14, Hatch Rebuttal, at 4:21-23.*	*that these are not new UNEs that must be requested by UTEX through the BFR process established by AT&T Texas. The Arbitrators direct the parties to add the following provisions from the CJP-AT&T Texas ICA to language in the Appendix UNE of the Alpheus-AT&T ICA. References to SBC Texas in the original ICA have been changed to AT&T Texas.* *"Network Interface Device* *The Network Interface Device (NID) is a device used to connect loop facilities to inside wiring or a compatible interface device or NID on an AT&T Texas owned or controlled telephone pole where the CLEC Radio Port connects with AT&T Texas's network. The fundamental function of the NID is to establish the official network demarcation point between a carrier and its end user customer or an AT&T Texas-supplied loop and a compatible interface device or NID on an AT&T Texas owned or controlled telephone pole where the CLEC Radio Port connects with AT&T Texas's network. The NID Unbundled Network Element is defined as any means of interconnection of end-user customer premises wiring to AT&T Texas's distribution loop facilities, such as cross connect device used for that purpose, and it includes all features, functions, and capabilities of the NID. The NID contains the appropriate and accessible connection*

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					points or posts to which AT&T Texas, CLEC and/or the end user customer each make its connections. Pursuant to applicable FCC rules, AT&T Texas offers nondiscriminatory access to the network interface device on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service. *To the extent an AT&T Texas NID exists, it will be the interface to customers' premises wiring or a compatible interface device or NID on an AT&T Teas owned or controlled telephone pole where the CLEC Radio Port connects with AT&T TEXAS network unless CLEC and the customer agree to an interface that bypasses the AT&T TEXAS NID.* *Notwithstanding any language to the contrary, CLEC may request AT&T Texas to place a compatible interface device or NID on an AT&T TEXAS owned or controlled telephone pole where the CLEC Radio Port connects with AT&T Texas network. The rates, terms and conditions for such placement will be the same as for establishing a new network interface arrangement at a business location using an appropriate protected outdoor network interface device.* *<u>Local Loop</u>* *Pursuant to applicable FCC rules, a local*

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					loop UNE is a dedicated transmission facility between a distribution frame (or its equivalent) in an AT&T Texas Central Office and the loop demarcation point at an End User customer premises or a compatible interface device or NID on an AT&T Texas owned or controlled telephone pole where the CLEC Radio Port connects with AT&T Texas's network. A loop may also function as a UNE when used to provide Telecommunications Service to more than one CLEC Customer via a CLEC supplied radio port. The loop includes the NID and may include the Inside Wire subloop in a multi-unit environment where the Inside Wire subloop is owned or controlled by AT&T Texas. The Parties acknowledge and agree that a transmission facility to a CMRS facility does not have to be unbundled. The local loop UNE includes all features, functions and capabilities of the transmission facility, including attached electronics (except those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers), and CLEC requested line conditioning (subject to applicable charges in Appendix Pricing). The local loop UNE includes, but is not limited to DS1, DS3, fiber, and other high capacity loops to the extent required by applicable law. *When CLEC orders a 251(c)(3) Unbundled loop, CLEC will be provided a*

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					termination on whatever demarcation device, if any, connects the loop to the customer premises or a compatible interface device or NID on an AT&T Texas owned or controlled telephone pole where the CLEC Radio Port connects with AT&T Texas's network, without additional charge. *<u>Connections Relating to Subloops</u>* *Connection at a pole: CLEC may request AT&T Texas to place a compatible interface device or NID on an AT&T Texas owned or controlled telephone pole where the CLEC Radio Port connects with AT&T Texas's network. The rates, terms and conditions for such placement will be the same as for establishing a new network interface arrangement at a business location using an appropriate protected outdoor network interface device.* *Connection at an FDI, an RT, a terminal or NID: CLEC may access a distribution subloop at an FDI, a terminal, a NID, or an RT. For Engineering Controlled Splice (ECS) applications and Small Volume Splice (SVS) installations the rates and timeframes stated in Section 4.19 shall be treated as interim pursuant to Section 4.19.6 and 4.19.11 of this agreement.* *Where CLEC has requested AT&T Texas to combine two distribution subloops that*

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					are not on the same physical pathway, the combination shall be performed by AT&T Texas on an individual case basis, and shall be priced at TELRIC-based rates. The Parties agree that AT&T Texas shall not be required to install new subloops where none already exist. The combination shall be performed within 30 days after the parties agree on the charges for work to be performed. The parties may extend the time for performance by agreement. *Subloop Access Arrangement form: CLEC shall request all subloops via the AT&T Texas Subloop Access Arrangement form (SAA) whether for small or large volume applications. CLEC will submit an SAA to initiate the process of requesting AT&T Texas to make its election and, if AT&T Texas elects to provide cabling, for establishing connection at an FDI, RT, NID or other terminal, to submit the initial order for required subloops to be combined under all three options.* *Connection at an FDI or an RT: CLEC may access a copper subloop at an FDI or an RT through the ECS or SVS applications. The SVS application shall be limited to 1-25 copper pair. Only one SVS installation shall be permitted per location.* *<u>Engineering Controlled Splice</u>*

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					(ECS)/Small Volume Splice (SVS) *Engineering Controlled Splice (ECS): On an interim basis, for large volume interconnection arrangements established by CLEC through AT&T Texas's Special Construction Arrangement ("SCA")/ECS process, AT&T Texas will provide CLEC with subloop access to the RT under existing rates, terms and conditions as to the FDI and will provide CLEC with the same accessibility on an individual case basis ("ICB") to the RT (when hard wired) under existing rates, terms and conditions as set forth below.* *In those instances where an RT is hard wired, CLEC may obtain large volume access to a non-high capacity copper subloop, at, or adjacent to, the RT via a cross-connect point (referred to as an ECS). At the CLEC's election the CLEC may request an ECS in lieu of an SVS. The ECS shall be made available for Subloop Access Arrangements (SAA) utilizing the Special Construction Arrangement (SCA) subject to the following rates, terms and conditions:* *As an ordering charge, CLEC shall pay AT&T Texas the rate specified in Appendix Pricing UNE for one New Complex service order charge.* *The ECS shall be priced on an ICB basis. CLEC shall pay labor charges to AT&T*

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					Texas for ten (10) hours in Maintenance Service Charge fees for each twenty five (25) pair increment. The number of pairs involved is the sum of all CLEC pairs to be terminated, and all AT&T Texas pairs requested for access. All terminations of CLEC and AT&T Texas will be in 25 pair increments. *AT&T Texas shall complete the ECS within ninety (90) days from the date AT&T Texas receives CLEC's request for an ECS. CLEC shall request an ECS by submitting an SCA using a Sub-loop Access Arrangement Application. CLEC shall submit a separate request for each ECS. Upon completion of the ECS, CLEC will pay AT&T Texas the actual cost of all material required to complete the ECS before Connecting Facility Arrangement (CFA) assignments are provided to CLEC.* *Permanent prices. After AT&T Texas has completed a total of at least five (5) ECS applications in Texas, whether for CLEC or for CLECs that are parties to similar agreements, either Party to this Agreement may initiate a new proceeding before the Texas Commission to set permanent rates on pricing and installation time. Should either Party initiate such a proceeding, all charges associated with any ECS requests submitted by CLEC to AT&T Texas beyond the fifth ECS application completed under this Agreement or similar agreements will be retroactively trued-up*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
					to the final prices determined in such proceeding (i.e., starting with any ECS charges paid by CLEC to AT&T Texas beyond the 6th ECS request (subject to any appeals and associated review)). *Small Volume Splice (SVS): A Small Volume Splice (SVS) is a connection between the CLEC Subloop Interface Device (SID) and an AT&T Texas RT or FDI. A SID is a CLEC provided pre-wired cross-connect device. Unless otherwise agreed to by the Parties, an SVS will be a twenty-five pair copper raw ended cable. The non-splicing Party shall provide sufficient cable to allow for splicing by the splicing Party within an enclosure. The splicing Party shall splice the cable together using an appropriate connector and shall weatherize and protect the connection using industry standard methods for outside plant work.* *CLEC will be given cable facility assignment (CFA) information identifying the location of the terminating cable at the AT&T Texas location upon completion of the engineering work order associated with the SVS.* *CLEC shall initiate a splice between its SID and an AT&T Texas FDI or RT by submitting a Subloop Access Arrangement (SAA) Application. AT&T Texas may assess 1 New Complex service order charge and 10 hours in Maintenance*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
					Service Charges for each SVS performed. AT&T Texas shall complete all required work and make subloop access available within 90 calendar days from the day CLEC requests such access. *Permanent prices. After AT&T Texas has completed a total of at least five (5) SVS applications in Texas, whether for CLEC or for CLECs that are parties to similar agreements, either Party may initiate a new proceeding before the Texas Commission to set permanent rates on pricing and installation time. Should either Party initiate such a proceeding, all charges associated with any SVS requests submitted by CLEC to AT&T Texas beyond the fifth SVS applications completed by AT&T Texas under this Agreement or similar agreements, will be retroactively trued-up to the final prices determined in such proceeding (i.e., starting with any SVS charges paid by CLEC to AT&T Texas beyond the SVS request completed by SBC TEXAS (subject to any appeals and associated review)).''*
AT&T UNE-20	Should the Agreement include only the appropriate UNE loop types available under current law?	UTEX (RMU 4.0 – 5.4.2) AT&T (8 – 8.5.6)	See UTEX Position Statements for AT&T UNE 1 and UTEX UNE 1 *UTEX states that the TRRO Riders in the ICA (allowed by Order 30) ensure that any part of UTEX's 2005 proposed contract language that are inconsistent with the TRO and TRRO are no longer in effect. UTEX states that it is not requesting any declassified network elements. UTEX Initial Br. at 177-178.*	Yes. UTEX's language contains elements eliminated from unbundling requirements by the TRO and TRO Remand (e.g., UTEX includes declassified elements such as OCn level and dark fiber loops). In addition, UTEX has proposed "loops" (e.g., "SONET Loops") that have never been classified as UNEs. UTEX's language should be rejected and AT&T's should be adopted.	*The Arbitrators agree that the provisions relating to local loops should conform to the FCC rules. However, the Arbitrators do not adopt the language proposed by AT&T Texas because the UNE terms adopted by the Arbitrators under DPL issue AT&T UNE 1 includes language on local loops that conforms to current FCC rules and is therefore compliant with the TRO/TRRO. In addition, the inclusion of the Wire Center Classification Attachment*

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			With respect to routine network modifications, UTEX contends that AT&T's proposed language in its UNE §§ 8.5 and 13.7 are inconsistent with the Commission's determinations in Docket No. 28821 or the changes made to ICAs after the issue was remanded to the Commission by the U.S. District Judge Sparks. UTEX Ex. 1, Direct Testimony of Lowell Feldman ("Feldman Direct"), at 284:4-8.	*AT&T Texas states that in impaired wire centers, AT&T Texas still has the obligation to provide DS1/DS3 capable loops as UNEs and in non-impaired wire centers, the CLECs have to obtain these loops as Special Access. AT&T Texas states that its proposed language addresses the type of loops and the associated terms and conditions for these loops, the declassification procedures for DS1 and DS3 facilities, and the routine network modifications on UNE loops. AT&T Ex. 13, Hatch Direct, at 18:10-19:5.* *AT&T Texas states that the Commission removed the phrase "without additional charges or minimum term commitments" from the Routine Network Modification language in Docket No. 28821, and AT&T's proposed language on routine network modifications does not include the aforementioned deleted phrase. AT&T Ex. 14, Hatch Rebuttal, at 9:12-17.*	*allowed by Order 30 and adopted by the Arbitrators under DPL issue AT&T UNE-1 ensures that the process for future wire center declassification for DS1 and DS3 loops is addressed.* *With respect to routine network modifications, the Arbitrators note that in an amendment to the CLEC Coalition ICA intended to reflect the decision of the U.S. District Court for the Western District of Texas on the issue of routine network modifications, the parties agreed to delete the phrase, "without additional charges or minimum term commitments." The Arbitrators have adopted the TRO/TRRO Remand Rider (allowed by Order No. 30) under DPL issue AT&T UNE 1, and the terms relating to routine network modifications to unbundled loop and transport facilities are addressed in Section 13 of the TRO/TRRO Rider. The provisions in the TRO/TRRO Rider do not contain the phrase "without additional charges or minimum term commitments" that was deleted by the U.S. District Court Decision. However, there is an incorrect reference to section 4.3.3 in section 13.2 given that there is no section 4.3.3 in the Rider. The language in section 13.2 appears to be language taken from the CLEC Coalition-AT&T Texas ICA that was approved in Docket No. 28821. The Arbitrators direct the parties to replace the reference to section 4.3.3 with section 13.3.3 and add the following language for section 13.3.3 from the CLEC Coalition-AT&T Texas ICA and renumber the sections following section 13.3.3 in the TRO/TRRO Rider:*

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					"13.3.3 Routine network modifications do not include constructing new loops; installing new aerial or buried cable; splicing cable at any location other than an existing splice point or at any location where a splice enclosure is not already present; securing permits, rights-of-way, or building access arrangements; constructing and/or placing new manholes, handholes, poles, ducts or conduits; installing new terminals or terminal enclosure (e.g., controlled environmental vaults, huts, or cabinets); or providing new space or power for requesting carriers; or removing or reconfiguring a packetized transmission facility. AT&T Texas is not obligated to perform those activities for a requesting telecommunications carrier."
AT&T UNE-21	What are the appropriate terms and conditions under which AT&T must provide UNE sub-loops to UTEX?	UTEX RMU (5.5 – 6.4) AT&T (9-9.16.2)	See UTEX Position Statements for AT&T UNE 1 and UTEX UNE 1	AT&T' proposed language, which reflects the FCC's TRO and implementing rules, should be adopted. UTEX has proposed language not contained in the FCC's subloop rules. *AT&T states that the subloop, which is a segment of a loop, was redefined in the TRO as the copper distribution subloops and the subloops for access to multiunit premises wiring. AT&T states that under the TRO, the unbundled subloops exist only in the copper distribution portion of the loop; the feeder portion is not separately unbundled as a subloop. AT&T Texas Ex. 9, Niziolek Direct, at 49:8-51:5.*	*The Arbitrators agree with AT&T Texas that the provisions relating to subloops should conform to the FCC rules. However, the Arbitrators do not adopt the language proposed by AT&T Texas because the UNE terms adopted by the Arbitrators under DPL issue AT&T UNE-1 includes language on subloops that conforms to current FCC rules and is therefore compliant with the TRO/TRRO.*
AT&T UNE -	What are the appropriate	UTEX 7.1-7.6.1.1, 7.9.1-	See UTEX Position Statements for AT&T UNE 1 and UTEX UNE 1	AT&T's language contains terms and conditions for Dedicated Transport and its availability that	*The Arbitrators agree with AT&T Texas that the provisions relating to unbundled dedicated*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
22	Unbundled Dedicated transport/EEL types available under current law?	7.10.5) AT&T (13. – 13.1)		is consistent with the TRRO. AT&T's language also offers clear processes for the transition of elements should declassification occur. UTEX's language does not. *AT&T Texas states that its proposed language addresses unbundled dedicated transport including, but not limited to, UNE DS1/DS3 Dedicated Transport terms and conditions, the types of unbundled dedicated transport to be provided (DS1/DS3), as well as CAP requirements and future declassifications procedures. AT&T Texas Ex. No. 9, Niziolek Direct at 52:2-5.*	*transport/Enhanced Extended Link (EEL) types should be consistent with the TRRO. However, the Arbitrators do not adopt the language proposed by AT&T Texas because the UNE terms adopted by the Arbitrators under DPL issue AT&T UNE-1 include language on unbundled dedicated transport/EEL types that conforms to current FCC rules and is therefore compliant with the TRO/TRRO. In addition, the inclusion of the Wire Center Classification Attachment allowed by Order No. 30 and adopted by the Arbitrators under DPL issue AT&T UNE-1 ensures that the process for future wire center declassification for DS1 and DS3 dedicated transport is addressed.*
AT&T UNE-23	Is UTEX entitled to entrance facilities on an unbundled basis under current law?	UTEX RMU (7.6.2)	UTEX is not seeking an entrance facility as a § 251(c)(3) UNE. Those have been declassified and UTEX's UNE terms do not provide for them. UTEX does, however, have the right to secure an entrance facility that is used for interconnection under § 251(c)(2).	No. Applicable regulatory rulings have made clear that entrance facilities are no longer required to be offered on an unbundled basis. As a result UTEX's proposed language should be rejected *AT&T Texas states that while UTEX claims that it is not seeking entrance facilities as a FTA § 251(c)(3) UNE, UTEX's proposed contract language explicitly categorizes entrance facilities as part of a UNE. AT&T Texas states that UTEX's proposal to price entrance facilities at UNE rates, when it seeks the facilities for interconnection purposes, is inconsistent with the Commission's decision in Docket No. 28821, which held that interconnection facilities are not UNEs nor are they priced at UNE rates. AT&T Texas Ex. 9, Niziolek Direct, at 52:15-53:12.*	*The Arbitrators conclude that pursuant to FCC Rule, 47 C.F.R. §51.319(e)(2), AT&T Texas is not obligated to provide UTEX with unbundled access to entrance facilities. The Arbitrators, therefore, decline to adopt UTEX's proposed language requiring AT&T Texas to provide access to entrance facilities on an unbundled basis. Furthermore, the Commission concluded in Docket No. 28821 that entrance facilities are not available at TELRIC rates for purposes of interconnection. (Docket No. 28821, Arbitration Award –Track 1 Issues at 15-16. (February 22, 2005)).* *However, consistent with the Commission's conclusion in Docket No. 28821 that the cross-connects associated with entrance facilities used for interconnection should be provided at TELRIC rates, AT&T Texas shall provide cross-connects associated with entrance facilities at TELRIC rates. (Docket No. 28821,*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
					Order on Clarification and Reconsideration at 3-4. (May 11, 2005)). The Arbitrators address ICA language regarding cross-connects for interconnection facilities under AT&T NIM 1-5.
AT&T UNE-24	~~b)~~ What are the appropriate terms and conditions under which AT&T must provide UNE Dark Fiber Transport to UTEX?	UTEX RMU (8.1-8.11.2) AT&T (14 – 14.1);	See UTEX Position Statements for AT&T UNE 1 and UTEX UNE 1	AT&T's language contains terms and conditions for Dark Fiber Transport and its availability that is consistent with the TRRO. AT&T's language also offers clear processes for the transition of elements should declassification occur. UTEX's language does not. *AT&T states that it has proposed language regarding UNE dark fiber transport including, but not limited to, applicable terms and conditions; inventory availability information; determining spare fibers; and future declassification procedures. AT&T Texas Ex. 9, Niziolek Direct, at 53:16-18.*	*The Arbitrators agree with AT&T Texas that the provisions relating to unbundled dark fiber transport should be consistent with the TRRO. However, the Arbitrators do not adopt the language proposed by AT&T Texas because the UNE terms adopted by the Arbitrators under DPL issue AT&T UNE-1 include language on unbundled dark fiber transport that conforms to current FCC rules and is therefore compliant with the TRO/TRRO. In addition, the inclusion of the Wire Center Classification Attachment ensures that the process for future wire center declassification for dark fiber transport is addressed.*
AT&T UNE-25	a) Should AT&T's established and nondiscriminatory BFR process be applied as part of this agreement? b) Should the BFR process require exhaustion of the dispute resolution process before either Party goes to the PUC?	UTEX (BEU 6.0-6.9) AT&T (6-6.2)	See UTEX Position Statements for AT&T UNE 1 and UTEX UNE 1	a) Yes. AT&T's BFR process allows CLECs to request new, undefined UNEs, UNE Combinations and/or Commingling that involve a UNE that is required to be provided under the FTA but that was not addressed in the Agreement. The BFR process is a staple of the UNE Attachments and CLECs are familiar with it. To allow UTEX to implement its own BFR process would create confusion and could result in discriminatory treatment in favor UTEX. b) Yes. The Parties should always attempt to resolve the dispute amongst themselves prior to engaging the PUC.	*This issue is addressed s in the text of the Award in the section titled "OSS and Ordering."*
UTEX	What is the	UTEX Attachment	UTEX removed any UNE or network	The parties should incorporate terms and	*These issues are addressed under DPL Issues*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
UNE 1	appropriate way to identify the different types of network elements, and incorporate the necessary and impair restrictions into our Interconnection Agreement? How do the parties ensure a "Working relationship" through the transition of having industry UNEs taken off the "available" 251(c)(3) list? How does UTEX operate where it needs access to non-SBC network elements and must combine them with SBC network elements (for example, combining a 3rd	2 UNE, Raw Material UNEs, Appendix DSL, Enabling Funciton UNES, Business Enhancement UNEs and Appendices 1, 2 and 3 thereto	Element which does not pass a very specific "Voluntary" necessary and impair standard UTEX places on itself under this proposed contract. In essence, UTEX has done a market analysis, and sought alternative transport and functions. In some instances it has found it and in fact uses a 3rd party wholesale provider of transport services, and has installed and controlled its own "switching" technology although it is not similar to what SBC has. In other instances, other network providers, such as Time Warner, refused to allow any type of access to UTEX. What UTEX now proposes is a very limited set of UNEs (which is why its agreement is different and smaller than what is usually filed.) From a legal vantage point, these network elements fall into three categories: The first two interpret the FCC rules and are absolute requirements just for UTEX or any CLEC to continue in a competitive environment. The Third is where UTEX has shown specific impairment without the ability to acquire specific Network Elements. 1) Raw Material (or 251 c 3) UNEs –these are UNEs which meet a national impairment test and must be provided at TELRIC; 2) Business Function Network Elements. These Network Elements are the pieces or "Joints" used to connect other Unbundled Network Elements. Often these joints are called "Cross Connects" although sometimes they may in fact be logical	conditions for UNEs in accordance with applicable Law. AT&T's UNE Appendix is compliant to the latest FCC Orders. UTEX's proposal is not. AT&T has provided contract language that allows for a way for UTEX to request network elements for new, undefined unbundled network element via the Bona Fide Request Process (BFR). AT&T's positions on OSS are outlined in AT&T OSS- 1 and OSS-2. Additionally, AT&T has always acted in good faith.	*AT&T UNE-1 through AT&T UNE-25 and DPL Issues UTEX 65-71 (Duty to negotiate in good faith).*

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	party transport with a SBC "loop" or a 3rd party switching function with an SBC "loop") Given that no mechanized OSS systems are in place to accommodate UTEX's needs, is it reasonable for UTEX to establish "Manual" OSS processes? Are other network elements available under state law, § 251(c)(3), § 271 or merger conditions? For 251(c)(3) UNEs which survived, UTEX has proposed the most current arbitrated language of a wholesale CLEC		instead of physical. In essence these "Joints" now need be classified as separate elements because while previously SBC was required to provide all of the Unbundled Network Elements, now UTEX will have to provide many themselves and/or obtain them from other resources. When UTEX does so, it may require SBC to "Combine" the elements. In the event that SBC declines to "combine" the elements, UTEX must have the unencumbered right to combine the elements itself so that it can provide competitive services. 3) Business Enhancement UNEs are UNEs which are not already expressly made available by the FCC. UTEX proposes an extremely limited set of these UNEs based upon actual impairment and under § 251(c)(3), § 271, SBC's merger commitments and state law. UTEX includes under these UNEs 1) White pages; 2) Stutter Dial Tone/Message Waiting Indicator; 3) Fiber Loops; and 4) DS-1 and DS-3 Loops where the FCC does not require such UNEs at TELRIC Pricing. For these UNEs, UTEX has shown very specific impairment based upon (1) either anti-competitive affiliate relationships; or (2) a specific "last resort" need to serve an individual customer. Again to summarize: 1) Raw Material UNEs (these are Transport and loop UNEs which are required under the new FCC Rules- these		

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	(El Paso now know as Alpheus) with only those changes which are necessary to make these UNEs compliant with new FCC rules, is this appropriate language? For those UNEs not expressly listed by the FCC, but which should be made available under § 251(c)(3), § 271, merger conditions or state law, UTEX proposes an extremely limited set of network elements, and proposes a self imposed necessary and impair test which shows each UNE ordered is only done after an		should have TELRIC pricing and clear liquidated damages associated with failure to perform on a standard contract basis) 2) Business Function Network Elements: These are cross connects and must be either (1) performed by SBC at TELRIC Rates or (2) must allow UTEX parity access to SBC facilities to perform combinations of these elements with all other elements whether provided by SBC or a third party network provider. In essence if a CLEC has an existing transport or Loop with SBC and part of that transport or loop will no longer be provided at TELRIC by SBC, CLEC has the right to find an alternative way to deliver the service using "Raw Material" UNEs combined with other competitive network elements. This will include migrations of current switch ports, and transport elements both on low speed (DS-0) to high speed (OC-N) over time. 3) Business Enhancement UNEs are UNEs which are expressly listed by the FCC but arguably still required under state law, merger commitments, § 271 or which the PUC can create under § 251(c)(3) as it did with regard to dark fiber and subloops before the FCC lilsted those UNEs. UTEX proposes an extremely limited set of these UNEs based upon actual impairment and under both 271 and state law. UTEX includes under these UNEs 1) White pages; 2) Stutter Dial Tone/Message Waiting Indicator; 3) Fiber Loops; and 4) DS-1 and DS-3 Loops where the FCC does not require		

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	individual impairment is shown on the ordered UNE. Can SBC refuse to discuss UNEs with UTEX and refuse to acknowledge that both 271 and state law create independent mechanisms by which UNEs are created? What is the standard for creating a UNE outside of 251(c)(3) or for a state that is considering creating additional UNEs under § 251(c)(3) as this Commission did with dark fiber and subloops before those UNEs were created by the FCC?		such UNEs at TELRIC Pricing. For these UNEs, UTEX has shown very specific impairment based upon (1) either anti-competitive affiliate relationships; or (2) a specific "last resort" need to serve an individual customer. For each of these UNE Sections, UTEX employs the current Texas Best Practices where they still apply. For example, for what UTEX calls the raw Material UNEs which are also 251(c)(3) UNEs, UTEX employs the language recently awarded in the El Paso Global Networks Arbitration. Importantly UTEX incorporated the result of the arbitration including limitations. The only limitation on wholesale services were that a CLEC can not use an individual UNE to exclusively provide service to a legacy CMRS Carrier.		

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	Is UTEX disadvantaged to the necessary and impair standard unless White Page Listings are available to UTEX customers on just and reasonable terms? Is UTEX disadvantaged to the necessary and impair standard unless Message Waiting Indicator is available to UTEX (and its customers) on just and reasonable terms? Is UTEX disadvantaged to the necessary and impair standard without fiber loops, DS-3				

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	loops and DS-1 loops if after attempting to acquire a loop where the FCC has indicated ILECs need not make them available, but UTEX can not obtain a physical connection to a building or premises to provide service? If UTEX can continue to order such loops under these circumstances, what prices should apply? Do SBC's actions in refusing to negotiate with UTEX constitute a "Bad Faith" negotiating practice, and if so what remedies are available to UTEX				
AT&T E911-1	Should terms and conditions for	AT&T Entire Attachment E911	UTEX's Customers usually have an independent obligation to provide or support 911 and – other	Terms and conditions for E911 emergency services should be maintained in a separate	*This issue is addressed in the text of the Award in the section titled "E911 Service."*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
	emergency services (E911) continue to be included in a separate attachment or added at the end of the Public Safety, Network Security and Law Enforcement attachment?	(Note: AT&T has reflected specific 911 disputes below with section references based on Attachment E911) UTEX Public Safety §§ 4 – 11	than UTEX's VoIP and CMRS affiliate – they do not need 911 capabilities from UTEX. Or they do not have any 911 obligations and don't need 911 capabilities from UTEX. AT&T is inappropriately trying to use 911 as a club to inhibit UTEX's attempts to service its customers and have a different business model. AT&T tried once before to deny interconnection pending "911 approval" and this Commission held that it could not do so since most of UTEX's services do not involve entities that require or need 911. AT&T's anticompetitive and inappropriate attempts to use 911 as a barrier to entry and competition must be refused. UTEX does not oppose reasonable 911 terms. But they must be reasonable and crafted with an understanding of the purposes for insertion and how and when they will be used, and *not* used. This is yet another instance where recognition that many provisions typically in ICAs deal with Legacy/POTS matters and serve no purpose and in fact can be a hindrance given UTEX's business model and customers.	attachment, as they are today. Emergency services require comprehensive contract provisions that are independent of other contract provisions. UTEX's proposal to tack E911 at the end of another appendix would make these provisions difficult to administer, since that would be inconsistent with AT&T's other agreements. Ease of contract administration to avoid confusion is important for these critical services.	
AT&T E911-2	What are the appropriate definitions for E911 Universal Emergency Number Service; Automatic Number Identification (ANI); and Automatic Location Identification	E911 § 1.1, 1.5, 1.6, 1.12 UTEX Attachment Public Safety §§ 4-11	See UTEX's Position Statement on E911-1.	AT&T's definitions supply the appropriate detail to avoid ambiguity and allow the parties to provide critical E911 service. AT&T has added a definition for ESN, since that term is utilized in the Texas Pricing Schedule/E911 now applicable in Texas. AT&T's definitions are consistent with the National Emergency Number Association (NENA) glossary and also match those set forth in the PUC's Substantive Rules, Chapter 26, Subchapter Q, § 26.433.	*This issue is addressed in the text of the Award in the section titled "E911 Service."*

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	(ALI)? Should the term Emergency Services Number (ESN) be included and if so, what is the proper definition?				
AT&T E911-3	Should the defined term Selective Routing (SR) also include the concept of a Control Office? If not, should UTEX's undefined term Control Office be utilized in the agreement?	E911 §§ 1.7, 2.1.1, 2.1.2 UTEX Attachment Public Safety §§ 4-11	See UTEX's Position Statement on E911-1.	Yes. The terms E911 Selective Router (SR) and E911 Control Office mean the same thing in the industry. UTEX proposed to use the term Control Office, but did not propose a definition. Since the terms are interchangeable, rather than disputing UTEX's use of an undefined term, AT&T proposes to include Control Office in the definition of Selective Routing. The term Control Office should not be utilized in the agreement unless it is clearly defined.	*This issue is addressed in the text of the Award in the section titled "E911 Service."*
AT&T E911-4	What is the proper terminology for the individual placing a 911 call?	E911 §§ 1.9, 1.10 UTEX Attachment Public Safety §§ 4-11	Is AT&T willing or able to insert Callable E-Mail Addresses, URIs or other alternative addresses in its database? No. AT&T is once again attempting to make traditional telephone numbers rule the world and wag the dog even when an untold number of users do not even have or use telephone numbers any more, and if they do use telephone numbers they are not wireline, not geographically relevant and may not come from either UTEX or AT&T. 911 is an important public safety function. But it cannot be used to maintain AT&T's Legacy business model, its Legacy technology or to crush alternative ways that users are communicating today and will want to communicate tomorrow.	The individual placing a 911 call should be referred to as an End User, as defined in the GTCs. The name and address resident in the 911 database will reflect an individual End User's information. UTEX's use of the term Customer is too broad. *AT&T Texas proposes the term "End User Customer" to refer to the customer that places a 911 call, stating that this term clearly delineates between a retail customer who is an End User and a wholesale customer that would have its own End Users. AT&T Texas understands that UTEX provides wholesale services to other service providers, so it is very important to correctly*	*The Arbitrators agree with AT&T Texas that clarity is needed to ensure proper references. The Arbitrators do not find UTEX's comments alleging that AT&T Texas is attempting to perpetuate its legacy technologies or to crush new technologies to be germane to this DPL issue, and note that neither the FTA nor any subsequent FCC orders or rulings place any responsibility upon ILECs to update their networks to accommodate the alternative addresses to which UTEX refers. The Arbitrators find it reasonable to adopt the term "End User" as the term is defined in the text of the Award in the section titled "End User Definition."*

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				recognize that an End User is the actual party placing a call. AT&T Texas asserts that UTEX's position suggests that AT&T Texas should allow "E-Mail addresses, URIs or other alternative addresses" to be used by callers seeking to access E911 through AT&T Texas, but AT&T Texas maintains that this is not technically possible in a circuit switched network such as the one used by AT&T Texas. AT&T Texas further points out that if a customer has an emergency, an email address or URI will not identify a physical street address, which is a fundamental requirement of E911. AT&T Ex. 19, Direct Testimony of Mark Neinast ("Neinast Direct"), at 10:10-11:1.	
AT&T E911-5	Is it appropriate to limit AT&T's obligations to provide 911-related services to UTEX to those circumstances where UTEX is certified as a CLEC and AT&T is the 911 service provider?	E911 §§ 2.1, 2.4, 2.6 UTEX Attachment Public Safety §§ 4-11	UTEX is certificated statewide. AT&T is not "the 911 service provider"; that is what a 911 entity does. Where AT&T is operating a database or a selective router UTEX is more than willing to have reasonable terms that will handle 911 calls for Legacy/POTS calls. AT&T, however, is inappropriately trying to use 911 issues as a means to maintain AT&T's Legacy business model, its Legacy technology or to crush alternative ways that users are communicating today and will want to communicate tomorrow	Yes. AT&T should only be obligated to provide 911-related services to UTEX for those areas where UTEX is certified as a CLEC and where AT&T is also the 911 service provider. AT&T's language sets forth appropriate limitations to AT&T's obligations in clear and simple terms and should be adopted.	*This issue is addressed in the text of the Award in the section titled "E911 Service."*
AT&T E911-6	Should the agreement contain AT&T's language regarding how it will handle the information it receives from	E911 § 2.1a UTEX Attachment Public Safety §§ 4-11	Is AT&T willing or able to insert Callable E-Mail Addresses, URIs or other alternative addresses in its database? No. AT&T is once again attempting to make traditional telephone numbers rule the world and wag the dog even when an untold number of users do not even have or use telephone numbers any more, and if they do use telephone numbers they are not	Yes. AT&T's language, which sets forth precisely what information AT&T will deliver to the PSAP based on the information it receives from UTEX when processing a UTEX end user's 911 call, is appropriate for the agreement and should be adopted.	*This issue is addressed in the text of the Award in the section titled "E911 Service."*

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	UTEX and relays to the PSAP when processing a 911 call?		wireline, not geographically relevant and may not come from either UTEX or AT&T. 911 is an important public safety function. But it cannot be used to maintain AT&T's Legacy business model, its Legacy technology or to crush alternative ways that users are communicating today and will want to communicate tomorrow.		
AT&T E911-7	What are the appropriate trunking requirements between the Selective Router (SR) and the E911 customer (PSAP)?	E911 § 2.2 UTEX Attachment Public Safety §§ 4-11	UTEX's proposed terms adequately address trunking requirements.	AT&T's language sets forth AT&T's responsibilities for trunking between its SR and the PSAP(s). This trunking is provided based on the documented requirements of its 911 customers and the PUC's approved tariff. UTEX has indicated AT&T should share the specifics of that documentation, but that documentation has no particular relevance for UTEX. AT&T's language is reasonable and should be adopted.	*This issue is addressed in the text of the Award in the section titled "E911 Service."*
AT&T E911-8	Should AT&T's language regarding provision of facilities UTEX may utilize for 911 interconnection be included?	E911 § 2.2a UTEX Attachment Public Safety §§ 4-11	No. If UTEX needs facilities to get to a selective router it should be able to obtain them as UNEs or on cost-based terms as part of interconnection.	Yes. AT&T's language regarding facilities UTEX may use for 911 interconnection is appropriate. AT&T's language correctly indicates UTEX may obtain such facilities pursuant to the agreement, via AT&T's tariff, from another provider, or use its own facilities.	*This issue is addressed in the text of the Award in the section titled "E911 Service."*
AT&T E911-9	Should the agreement address AT&T's E911 database responsibilities?	E911 §§ 2.4a, 2.4b, 2.4c UTEX Attachment Public Safety §§ 4-11	UTEX's proposed terms adequately address AT&T's responsibilities when it is the one that manages a 911 database.	Yes. The agreement should set forth AT&T's E911 database responsibilities with respect to UTEX's End User 911 records. AT&T's language will minimize disputes.	*This issue is addressed in the text of the Award in the section titled "E911 Service."*
AT&T E911-10	Should the agreement contain the appropriate	E911 §§ 1.4, 2.5a, 2.5b, 2.5c, 2.5d, 2.5e, 2.5f, 2.5g, 2.5i, 2.6a, 2.6b, ,	UTEX's proposed terms adequately address trunking requirements.	Yes. Both parties have responsibilities with respect to providing E911 service to Texas customers when a UTEX End User dials 911 and the call is routed to AT&T SR. If either	*This issue is addressed in the text of the Award in the section titled "E911 Service."*

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	trunking requirements for E911 service between UTEX and AT&T's SR?	4.2, 9.0, 9.1 UTEX Attachment Public Safety §§ 4-11		party fails to meet its responsibilities, it is the customer that suffers. The agreement should reflect both parties' responsibilities with certainty. UTEX disputes AT&T's language specific to UTEX's E911 trunking to AT&T. UTEX's failure to meet these obligations could result in failed 911 calls. AT&T's language should be included in the agreement.	
AT&T E911-11	Should the agreement address handling of 911 network maintenance problems?	E911 § 2.5h UTEX Attachment Public Safety §§ 4-11	UTEX's proposed terms adequately address 911 network maintenance problems.	Yes. AT&T's language addresses how the parties will handle 911 network maintenance problems. Lack of clarity on this issue could result in serious adverse consequences for Texas customers.	*This issue is addressed in the text of the Award in the section titled "E911 Service."*
AT&T E911-12	Should the agreement contain language setting forth UTEX's E911 database responsibilities?	E911 §§ 2.7a, 2.7b, 2.7c, 2.7d, 2.7e UTEX Attachment Public Safety §§ 4-11	UTEX's proposed terms adequately address UTEX's 911 database responsibilities.	Yes. The agreement should set forth UTEX's responsibilities regarding its End User 911 records that will reside in the E911 database. Including such language will minimize disputes between the parties and will limit the potential for database errors.	*This issue is addressed in the text of the Award in the section titled "E911 Service."*
AT&T E911-13	Should the agreement make clear that UTEX must handle 911 surcharges applicable to its End Users?	E911 § 2.9 UTEX Attachment Public Safety §§ 4-11	UTEX is not asking AT&T to be responsible for any 911 surcharges that may apply to any of UTEX's customers or the patrons of its customers. AT&T's proposed terms, however, employ an unreasonable and anticompetitive definition and use of "End User" in the context of UTEX's business and model.	Yes. As its End Users' local service provider, UTEX is the party obligated to handle related applicable 911 surcharges. Absent AT&T's language, it would not be clear that UTEX is the party with such responsibilities.	*This issue is addressed in the text of the Award in the section titled "E911 Service."*
AT&T E911-14	Which party's language regarding Methods and Practices should be included?	E911 § 3.1 UTEX Attachment Public Safety §§ 4-11	UTEX's language regarding Methods and Practices should be used.	AT&T's language regarding Methods and Practices is preferable because it includes all rules and guidelines related to E911 service that may apply to the parties' provision of E911 service.	*This issue is addressed in the text of the Award in the section titled "E911 Service."*
AT&T E911-15	Should the agreement contain terms and	E911 §§ 4.1, 4.1.1 UTEX Attachment Public Safety §§ 4-	UTEX's proposed terms and conditions regarding E911 customer specifications should be used.	Yes. AT&T uses a standard documentation form (Texas Pricing Schedule/E911) that captures details regarding a CLEC's serving area	*This issue is addressed in the text of the Award in the section titled "E911 Service."*

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	conditions regarding E911 customer specifications?	11		and AT&T's system configuration for the relevant SRs. A similar form is in UTEX's current agreement. The agreement should contain terms and conditions establishing how the parties will document 911 arrangements between UTEX, AT&T and the relevant PSAPs so that it is clear how 911 service will be configured. This ensures emergency calls are completed.	
AT&T E911-16	Should the agreement state that the parties' liability for loss associated with a 911 failure is limited only by provisions in the General Terms and Conditions (GTCs), or should it also reference the Texas Health and Safety Code?	E911 §§ 7.0, 7.1 UTEX Attachment Public Safety §§ 4-11	UTEX does not oppose a reference to the Health and Safety Code if it correctly characterizes and applies that law.	The agreement should articulate that the parties' liability in the event of loss arising from provision of 911 service is limited by Texas Health and Safety Code 771.053. AT&T's liability and indemnity provisions in the GTCs are sufficient for non-emergency services but are inadequate for protection against potential catastrophic loss associated with a 911 failure that might occur in the normal course of business (e.g., accidental cable cut).	*This issue is addressed in the text of the Award in the section titled "E911 Service."*
AT&T E911-17	Should the 911 attachment address non-SS7 interconnection?	E911 §§ 8.0, 8.1 UTEX Attachment Public Safety §§ 4-11	Yes.	No. UTEX proposes vague language regarding non-SS7 interconnection in the context of the 911 attachment. It is unclear how non-SS7 interconnection arrangements would function or be compatible with 911 service.	*This issue is addressed in the text of the Award in the section titled "E911 Service."*
AT&T LNP-1	Is it appropriate for the agreement to reflect the parties' local number portability (LNP) obligations with specificity, providing for	AT&T Entire Appendix Local Number Portability UTEX §§ 1.1, 2.1	UTEX does not believe that the specifics of LNP should be addressed in the ICA. LNP is governed by FCC numbering rules (Part 52, Subpart C), not the part 51 rules. See FCC Rule 51.203. AT&T has proposed to use its "generic" LNP terms rather than terms flowing from 28821. The Commission has not substantively reviewed	Yes. AT&T's Appendix Local Number Portability is reasonable and consistent with governing law and industry standards. UTEX's language fails to identify the specific obligations of the parties and limits the agreement to abide by industry guidelines to SS7 interconnection. The obligations in this Appendix need to apply whether UTEX interconnects with AT&T via	*The Arbitrators find that UTEX's language in § 1.1 is substantially encompassed within AT&T Texas's § 1.1 and that the inclusion of the North American Numbering Council guidelines in AT&T Texas's language is reasonable. Therefore, the Arbitrators adopt AT&T Texas's § 1.1.*

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	stable, predictable and reliable porting of telephone numbers and routing of calls between the parties' networks?		these terms under § 252(c) or (e)(2)(B). This case should stay on focus: the interconnection, intercarrier compensation and signaling, routing and rating of traffic to and from UTEX's non-carrier customers - matters that have never before been addressed in Texas. AT&T's decision to demand use of its generic terms for all other matters is patently designed to snarl up this case by injecting numerous issues that have already been previously litigated and disposed in the WCC case, the Alpheus arbitration and Docket 28821. UTEX is making every effort to eliminate all other issues so the Commission's attention can stay on the real issue, the one that it expressly said it would not address in Docket 28821, and the issue the FCC told it to resolve under current law	SS7 protocol or via an alternative form of interconnection. UTEX's language, if adopted, will likely lead to disputes between the parties and could adversely affect end user service, such as delay and/or failure of porting requests, incorrect routing of calls involving ported numbers, or even service outages.	*The Arbitrators find AT&T Texas's argument that UTEX's proposed § 2.1 inappropriately limits the Parties to following industry guidelines for SS7 interconnection to be without merit, because AT&T Texas's proposed language contains specific references to SS7 technology and ISUP (SS7's protocol) data fields. Therefore, the Arbitrators adopt UTEX's proposed § 2.1.* *The Arbitrators conclude that AT&T Texas's proposed §§ 2.2-10.3 are reasonable and therefore adopt them.*
AT&T NUM-1	Is it appropriate for the agreement to reflect the parties' numbering obligations with specificity, providing for stable, predictable and reliable routing of calls between the parties' networks?	AT&T Entire Appendix Numbering UTEX § 1.1; UTEX Attachment NIM and its Appendices and Attachments and Exhibits	UTEX's proposed terms discuss numbering in the few places where it is necessary and appropriate in UTEX's proposed Appendix NIM and its Appendices and Exhibits. Other than as necessary to ensure that each LEC routes calls addressed to numbering resources assigned to the other party by performing the requisite switch translations (like with UTEX's 500 numbers assigned to serve ESPs) UTEX does not believe that numbering should be extensively addressed in the ICA. This is all governed by FCC numbering rules (Part 52, Subpart C), not the part 51 rules. UTEX and AT&T probably have a dispute over what an "end user" is. UTEX's non-carrier customers are end users. When UTEX provides service to a carrier like its CMRS affiliate the patrons that use the services, applications and devices offered by UTEX's customers are not	Yes. AT&T's Appendix Numbering is reasonable and consistent with governing law and industry standards. AT&T's language enables calls dialed in either party's network to route predictably to the correct destinations, prohibits charges for opening NXX codes in switches, and specifies an industry agreed-upon relationship between the location of an end user and the rate center assigned to the end user's telephone number. These terms ensure that both parties will have reasonable and identifiable interconnection responsibilities. UTEX's language fails to identify the parties' specific obligations and, if adopted, could both lead to disputes and adversely affect end user service.	*The Arbitrators conclude that AT&T Texas's proposed language is reasonable and provides appropriate specificity. The Arbitrators adopt AT&T Texas's proposed language with the exception that, as UTEX points out, there are some cases in which it is not possible to know the geographic location where a call originates or terminates. Accordingly, the Arbitrators adopt AT&T Texas's language, modified as follows:* *2.2 <u>To the extent it is technically feasible,</u> pursuant to Alliance for Telecommunications Industry Solutions (ATIS) Guidelines for the Section 7.3 of the North American Numbering Council Local Number Portability*

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			"end users" because they are not receiving a telecommunications service and are instead receiving an enhance/information service or some other non-telecommunications service. AT&T's proposed Numbering § 2.2 would impose the incoherent requirement that "[t]he Parties shall assign telephone numbers only to those End Users that are physically in the Rate Center to which an NXX is assigned, subject to exceptions as noted in industry numbering resource guidelines." UTEX does not really understand how AT&T would interpret or apply this language. For example, would this provision prohibit UTEX from providing service to Vonage, since that product is not geographic in nature? Could UTEX provide service to Google Voice? Can UTEX use the 500 numbering resources it was assigned by the FCC for any purpose unless it becomes an AT&T access customer even though UTEX is an LEC peer providing telephone exchange service? AT&T is focused on tying users to traditional telephone numbers, and using that as some indication of geographic location. This is largely inconsistent with how New Technology customers operate. UTEX, and its customers, on the other hand, are more interested in identifying addressing, presence and the ability to connect using things like a "Callable E-mail) address" (see GTC § 51.22) or an IP address or URI. AT&T will not allow a subscriber to list a physical address unless it is tied to a telephone number. AT&T is trying to outlaw mobility. AT&T wants the Commission to issue a series of discrete (and sometimes seemingly innocuous) orders that individually and in		*Architecture and Administration of Telephone Numbers, revised August 15, 2003 (INC 01-0515-028), the Parties agree that CO Codes/blocks allocated to a wireline Service Provider are to be utilized to provide service to a customer's premise located in the same rate center that the CO Codes/blocks are assigned. Exceptions exist, for example tariffed services such as foreign exchange service.*

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			totality would allow the Legacy/POTS tail to wag the New Technology dog. UTEX says no. AT&T's proposed terms are totally buried in legacy thinking, and they completely ignore how society is evolving in how they receive communications, and advertise their address, presence and identity. AT&T's idea about user choice when the PSTN connectivity comes from a CLEC rather than AT&T or one of its affiliates is that users can have any kind or color phone they want, so long as it is fixed in a discernible AT&T local calling area, not moveable, is black and preferably rotary. AT&T demands that it must always get a cut even though it is not the actual provider. AT&T has proposed to use its "generic" numbering terms. The Commission has not substantively reviewed these terms under § 252(c) or (e)(2)(B). This case should stay on focus: the interconnection, intercarrier compensation and signaling, routing and rating of traffic to and from UTEX's non-carrier customers - matters that have never before been addressed in Texas. AT&T's decision to demand use of its generic terms for all other matters is patently designed to snarl up this case by injecting numerous issues that have already been previously litigated and disposed in the WCC case, the Alpheus arbitration and Docket 28821. UTEX is making every effort to eliminate all other issues so the Commission's attention can stay on the real issue, the one that it expressly said it would not address in Docket 28821, and the issue the FCC told it to resolve under current law.		
AT&T	Should the	AT&T Appendix	AT&T will undoubtedly mischaracterize	Yes. AT&T's OSS appendix, which includes the	*This issue is addressed in the text of the*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
OSS-1	agreement contain a discrete OSS appendix to set forth terms and conditions for UTEX to obtain nondiscriminatory access to AT&T's Operations Support System (OSS) functions?	OSS UTEX GTC §§ 18.2, Attachment Liquidated Damages, Attachment NIM ; Appendix 2 to NIM Appendix UNE § 3.2, 18, 23; Appendix xDSL § 5; Attachment Resale § 10.0	UTEX's position on OSS so as to portray UTEX as wanting a unique and special set of OSS terms and completely unwilling to use the OSS AT&T has. This is not correct; AT&T will make these arguments to try to hide the fact that its OSS simply cannot handle the things that UTEX is trying to do. Where AT&T's OSS has a functioning and effective method to pre-order, order or secure provisioning of a feature, functionality, service or method and means to interconnect then UTEX is more than willing to use it, o long as it works and does not require UTEX to waive its statutory and contractual rights. The problem is that AT&T's systems do not have methods to pre-order, order or secure provisioning of several UNEs or methods to access UNEs even those methods are prescribed by law, or allowed by law. AT&T purposefully designs its OSS to require CLECs to hew to AT&T's skewed notions of the law, the rules or its ICAs. There is no electronic means to pre-order, order or secure provisioning of a loop to a pole or a sub-loop. Similarly, AT&T's OSS requires CLECs seeking to interconnect to assume the role of a customer rather than a peer, and even more particularly to be an access customer and pay access – or to waive specific ICA rights – merely in order to accomplish interconnection. Interconnection under § 251(c)(2) is not, and cannot lawfully be required to constitute, the purchasing or ordering of an access service because Exchange Access is for IXCs that provide Telephone Toll; Interconnection is governed by § 251(c)(2) and § 252(d)(1), and	same OSS terms and conditions approved for CLECs in Docket No. 28821, has complete terms and conditions for providing UTEX nondiscriminatory access to AT&T's OSS functions for resale and UNEs. UTEX's proposal to have OSS-related terms and conditions scattered throughout the agreement should be rejected as unworkable, given the shared nature of OSS.	*Award in the section titled "OSS and Ordering."*

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Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
			both of those on their face prohibit access treatment. UTEX's proposed terms largely accept AT&T's OSS, but only when it works and does not require UTEX to waive rights and does not operate to deny, delay or frustrate interconnection or access to UNEs.		
AT&T OSS-2	Are the terms and conditions in AT&T's OSS appendix appropriate for providing an industry-uniform process for UTEX to access AT&T's OSS functions, while protecting the interests of all users of AT&T's OSS?	AT&T Appendix OSS UTEX GTC §§ 18.2, 51.47, 51.48, 51.49, 51.51, 51.54, 51.55, 51.56, 51.90, 51.110, 51.111, 51.133; Appendix UNE § 3.2, 18, 23; Appendix xDSL § 5; Attachment Resale § 10.0; Attachment Liquidated Damages, Attachment NIM ; Appendix 2 to NIM	See UTEX Position Statement to OSS-1.	Yes. CLECs have the opportunity to influence changes to AT&T's OSS through industry collaboratives. The results are standardized, uniform systems for all users of AT&T's OSS. UTEX seeks to influence OSS development through its contract, which would negatively impact other CLECs. AT&T should not be required to abandon standard practices for a single CLEC. Also, AT&T cannot allow unfettered access to its OSS because the data of all OSS users are housed in the same systems, and AT&T must protect both its systems and its users' proprietary information.	*This issue is addressed in the text of the Award in the section titled "OSS and Ordering."*
AT&T REC-1	Should a Recording Attachment be included in the Interconnection Agreement to address switch-based LECs' requirements for recording traffic in order to	AT&T Attachment 24: Recording	UTEX does not believe that it will have any traffic that will require recourse to or need recording and therefore did not propose to have an attachment addressing that topic. As a general rule, UTEX's goal is to not have extraneous terms or attachments for features or functions that will not in fact be used because UTEX's experience is that AT&T will use the words in a dispute to support its position on another topic. Therefore UTEX opposes AT&T's proposed recording terms. All	Yes, this attachment is necessary. Attachment 24: Recording identifies the Texas industry-accepted requirements for recording and transmitting data for billing switched access services to IXCs and alternately billed calls (e.g., collect calls) to end users. Without this Recording Appendix, UTEX and AT&T will not have reciprocal requirements to ensure that each Party receives the appropriate data for billing its services that are provided to IXCs and end users.	*The Arbitrators note that AT&T Texas's proposed contract language in Attachment 24 predates the Commission's approved terms on this issue in Docket No. 28821. The Arbitrators' review of AT&T Texas's proposed language reveals that while there are many similarities between the contract language proposed by AT&T Texas and the Commission approved language in Attachment 24 relating to Recording in the CJP-AT&T Texas ICA, there are also significant differences with respect to*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
	properly bill IXCs and end users for alternately billed calls, and if so, should AT&T's proposed language be approved?		necessary terms relating to call detail recording are set out in UTEX's Interconnection terms §7. However, with one important qualification UTEX would not strongly oppose insertion of BCR terms that have been affirmatively approved by the Commission under § 252(e)(2)(B) after an arbitration under § 252(b), and the determinations called for by § 252(c), Therefore, if the Commission believes for some reason that BCR terms should be included, UTEX would accept, in the alternative the BCR terms approved in Docket 28821 for CJP, specifically ATTACHMENT 24: RECORDING. The important qualification is that language must be inserted directly stating that the attachment applies only to legacy/POTS traffic and will not have any impact on or provide any interpretive aide to the language in the ICA that discusses new technology traffic or traffic to or from UTEX's wholesale customers. AT&T, however, has proposed to use its "generic" BCR terms rather than terms flowing form 28821. The Commission has not substantively reviewed these terms under § 252(c) or (e)(2)(B). This case should stay on focus: the interconnection, intercarrier compensation and signaling, routing and rating of traffic to and from UTEX's non-carrier customers - matters that have never before been addressed in Texas. AT&T's decision to demand use of its generic terms for all other matters is patently designed to snarl up this case by injecting numerous issues that have already been previously litigated and disposed in the WCC case, the Alpheus arbitration and Docket	The relevance of this attachment is further demonstrated by the Commission's findings in the Mega-Arb "that the (Recording) Attachment should be included in the Agreement given its consistency with the current OBF guidelines relating to MECAB" and adopted SBC's language at that time. *AT&T Texas states that the Commission found in Docket No. 28821 for Issue Comprehensive Billing 7 that the Recording attachment should be included in the ICA as a necessary function for gathering data to accurately create billing. AT&T Texas opposes UTEX's characterization of "new technology traffic" in general and therefore objects to UTEX's proposed modifications related to "new technology traffic." AT&T Texas also explains that while it did propose to include its generic BCR attachment in its February 5, 2010 ICA filing, it subsequently withdrew the proposal as a result of Order No. 27 given that that language was not associated with a change in law or subsequent negotiations between the parties. AT&T Ex. 21, Pellerin Direct, at 81:20-82:13.* UTEX offers no language to address this issue.	*certain provisions. The Arbitrators adopt the contract language in Attachment 24 relating to Recording in the CJP-AT&T ICA given that the language was approved in Docket No. 28821. However, the Arbitrators decline to modify the language as proposed by UTEX. The Recording Attachment is intended to ensure that each party receives the appropriate data for billing its services that are provided to IXCs, and therefore the requirements of this attachment will come into play only so far as an IXC is involved in the transport of the traffic, regardless of whether such traffic happens to be plain old telephone service traffic or new technology traffic.*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
			28821. UTEX is making every effort to eliminate all other issues so the Commission's attention can stay on the real issue, the one that it expressly said it would not address in Docket 28821, and the issue the FCC told it to resolve under current law		
AT&T PR-1	Should AT&T's pricing schedule be approved?	AT&T Proposed Pricing Schedules UTEX Proposed Pricing Schedules and Riders	UTEX affirmatively desires to have the prices for UNEs and resale and other ancillary functions that were approved in Docket 28821 and, where Alpheus has additional rights or terms, the Alpheus prices for those items. Order 30 removed must of this, but not all. Further, for anything related to § 251(c)(2) interconnection, and therefore required to be cost based under § 252(d)(1), UTEX has proposed to use the TELRIC-based prices for the same functionality or activity that appear for § 251(c)(3) UNEs since the statutory standard is the same, and FCC Rule 51.501 imposes TELRIC by rule. The reference to a price for a UNE does not mean UTEX is seeking access to a UNE; we are merely using the UNE price for convenience since the law requires that the price be the same regardless of whether it is UNE or interconnection. AT&T has proposed to use its "generic" pricing terms and prices rather than terms flowing from 28821. The Commission has not substantively reviewed these terms under § 252(c) or (e)(2)(B). UTEX has proposed to use the words for terms and conditions regarding pricing that approved by the Commission in the Alpheus case. *UTEX states that its 2005 UNE contract language included terms and pricing for a 4-wire Digital loop. UTEX states that although*	Yes. AT&T's proposed rates are based on cost studies and have been approved in multiple CLECs agreements. UTEX's proposed terms lack basis and should be rejected. *AT&T Texas states that for those rate elements affected by Docket No. 28600, its proposed rates reflect the outcome of that docket to the extent that those elements are still required to be offered as UNEs. For those rate elements that remain as UNEs pursuant to the TRO/TRRO, AT&T is proposing to retain the rates as they were in the pricing schedules found in the ICA between AT&T and UTEX that will be superseded by the ICA approved in this proceeding. AT&T's proposal would require that for any rate elements where parties wish to seek rate changes, the prices for those rate elements would be considered at a subsequent rate proceeding before the Commission. AT&T Texas states that its proposal is consistent with the way pricing was handled in Docket No. 28821. AT&T Ex. 9, Niziolek Direct, at 23:19-24:12.* *With respect to the 4-wire digital loop, AT&T Texas argues that its proposed contract language provides for a 4-Wire Digital Loop, which it calls DS1 Loops, and includes pricing for such loops. AT&T Texas states that the*	*The Arbitrators decline to adopt the pricing schedule proposed by either UTEX or AT&T Texas because the rates in these pricing schedules vary, at least for some rate elements, from the rates established by the Commission in Docket No. 28821, the last mega arbitration proceeding conducted by the Commission. The Arbitrators conclude that the prices for rate elements in the ICA should reflect the prices approved by the Commission in Docket No. 28821 which, the Arbitrators note, concluded after the parties to this arbitration submitted their competing pricing proposals in 2005. Therefore, the Arbitrators adopt the pricing schedule, Attachment 30 in the CJP-AT&T Texas ICA, which was approved in Docket No. 28821. The Arbitrators note that with respect to UNEs, the UNE terms adopted under DPL issue AT&T UNE-1 include the UNE Appendix from the Alpheus ICA. To the extent the Appendix UNE contains TRO/TRRO compliant terms for the provision of certain UNEs and associated cross-connects from the Alpheus ICA for which prices are not reflected in the Pricing schedule, Attachment 30 from the CJP ICA, the rates from the Alpheus pricing schedule shall be incorporated into the ICA.*

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			AT&T Texas witness Niziolek acknowledged the price omission and attached a revised pricing schedule to her rebuttal testimony, the revised schedule still does not have a price for a 4-wire Digital Loop. UTEX Initial Brief at 180-181.	*terms and conditions for 4-Wire Digital Loop (DS1 Loops) are set forth in AT&T Texas's proposed UNE attachment at §8.3.4 (and elsewhere), and the prices are listed in the pricing schedule filed with the rebuttal testimony of AT&T Texas witness Niziolek. AT&T Ex. 10, Niziolek Rebuttal, at 22:11-18; Initial Brief of AT&T Texas at 63.*	*With respect to the provision and pricing of 4-wire digital loops, the Arbitrators note that UTEX's 2005 proposed contract language for the 4-wire digital (1.544 MBPS) capable loop in section 5.2.3 of its Attachment 2 UNE Part 1 is the same as the contract language for 4-wire digital capable loop in the UNE Appendix in the Alpheus/AT&T Texas ICA. Furthermore, the prices for the 4- wire digital loop in the Alpheus/AT&T Texas ICA mirror the rates for 4-wire digital loops in the CJP/AT&T Texas ICA. The Arbitrators' decision under DPL issue AT&T UNE-1 to adopt the UNE Appendix in the Alpheus ICA coupled with their decision to adopt the pricing schedule contained in the CJP ICA ensures that the terms and pricing for a 4-wire digital loop is addressed in the ICA.*
AT&T PR-2	Should the Agreement have rates for UNEs?	AT&T Proposed Pricing Schedules UTEX Proposed Pricing Schedules and Riders	UTEX has proposed to use the prices for UNEs and resale and other ancillary functions. UTEX would much prefer that any prices set in more recent dockets be used, but our attempt to secure that result was gutted by Order 30. Further, for anything related to § 251(c)(2) interconnection, and therefore required to be cost based under § 252(d)(1), UTEX has proposed to use the TELRIC-based prices for the same functionality or activity that appear for § 251(c)(3) UNEs since the statutory standard is the same, and FCC Rule 51.501 imposes TELRIC by rule. The reference to a price for a UNE does not mean UTEX is seeking access to a UNE; we are merely using the UNE price for convenience since the law requires that the price be the same regardless of whether it is UNE or	Yes, with respect to rates for network elements that are properly unbundled. The rates for elements no longer unbundled per the FCC's *TRO* and *TRRO* should be excluded. *AT&T Texas states that the UNE rates identified within in its proposed pricing schedule comply with previous Commission findings with respect to UNEs, have been incorporated within current CLEC ICAs, and comply with the FCC's TRO and TRRO. AT&T Ex. 9, Niziolek Direct at 25:2-7.*	*This issue is addressed under DPL issue AT&T PR-1, above.*

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Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
			interconnection. AT&T has proposed to use its "generic" pricing terms and prices rather than terms flowing from 28821. The Commission has not substantively reviewed these terms under § 252(c) or (e)(2)(B).		
AT&T PR-3	WITHDRAWN				
AT&T CH - 1	Should the Interconnection Agreement include a Clearinghouse Attachment, and is AT&T's proposed language appropriate? Should the Parties have a means of settling Third Party Billed calls?	Clearinghouse Attachment	UTEX does not believe that it will have any alternatively billed intrastate intraLATA message toll call records and therefore there will be no need for the reporting of settlement revenues between UTEX and any other LEC. UTEX therefore did not propose to have an attachment addressing that topic. As a general rule, UTEX's goal is to not have extraneous terms or attachments for features or functions that will not in fact be used because UTEX's experience is that AT&T will use the words in a dispute to support its position on another topic. Therefore UTEX opposes AT&T's proposed CH terms. AT&T has proposed to use its "generic" clearinghouse terms rather than terms flowing from 28821. The Commission has not substantively reviewed these terms under § 252(c) or (e)(2)(B). This case should stay on focus: the interconnection, intercarrier compensation and signaling, routing and rating of traffic to and from UTEX's non-carrier customers - matters that have never before been addressed in Texas. AT&T's decision to demand use of its generic terms for all other matters is patently designed to snarl up this case by injecting numerous issues that have already	Yes and Yes. The Clearinghouse Attachment is required for all facility-based providers that originate or accept intrastate/intraLATA toll, collect, 3rd number billed, or credit card calls that utilizes the LEC-to-LEC network. Clearinghouse ensures that these call types are properly settled whereby the Party that bills its customer for the call will remit the revenues (less a message billing charge) to the Party who originated the call. The Clearinghouse Attachment is a staple in all facility based agreements and provides the process and means for the financial settlement/resolution of these calls.	*The Arbitrators adopt the Clearinghouse attachment proposed by AT&T Texas. The Arbitrators note that the contract language proposed by AT&T Texas is substantially similar to the language contained in Attachment 20 relating to Clearinghouse in the CLEC Coalition-AT&T Texas ICA, which was approved by the Commission in Docket No. 28821.* *UTEX has not proposed any contract language on this issue because it does not anticipate carrying any alternatively billed intrastate intraLATA message toll call records. The Arbitrators find that although UTEX's current business plans may not include the origination or acceptance of alternatively billed intrastate/intraLATA toll, collect, third number billed, or credit card calls that utilize the LEC-to-LEC network, it is important that the ICA contain language that would address the reporting of settlement revenues in the event that UTEX provides service to end users during the term of this ICA that result in charges for alternatively billed calls.*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
			been previously litigated and disposed in the WCC case, the Alpheus arbitration and Docket 28821. UTEX is making every effort to eliminate all other issues so the Commission's attention can stay on the real issue, the one that it expressly said it would not address in Docket 28821, and the issue the FCC told it to resolve under current law		
AT&T xDSL-1	What are the appropriate terms and conditions for xDSL?	All of AT&T xDSL Attachment and associated Pricing. UTEX Appendix 1 to Attachment 2 Raw Materials UNE (DSL) Appendix Pricing;;;	UTEX has now returned to its 2005 DSL terms as a result of Order 30. Those terms should be approved..	AT&T proposes its xDSL attachment.	*This issue is addressed in the text of the Award in the section titled "xDSL Service."*
AT&T xDSL-2	Should the Appendix define the types of xDSL Loops offered by AT&T?	Sections 2.1, 2.1.1, 4 (All subsections)of AT&T' proposed Attachment 25: xDSL and 7.2.1.2 UTEX Appendix 1 to Attachment 2 Raw Materials UNE (DSL) Appendix Pricing;	UTEX has now returned to its 2005 DSL terms as a result of Order 30. Those terms should be approved...	Yes. AT&T's language provides clarity on the types of xDSL loops that are offered. AT&T's language is the same as that found in the CLEC Coalition xDSL Appendix.	*This issue is addressed in the text of the Award in the section titled "xDSL Service."*
AT&T xDSL-3	Should § 4.4 of AT&T's proposed Attachment 25: xDSL be included?	Section 4.4 of AT&T' proposed Attachment 25: xDSL; UTEX Appendix 1 to Attachment 2 Raw Materials UNE	UTEX has now returned to its 2005 DSL terms as a result of Order 30. Those terms should be approved..	Yes. The PUC ordered the language in § 4.4 in the Rhythms/Covad Award. *See* § 4.3 of Covad's conforming Attachment 25: xDSL.	*This issue is addressed in the text of the Award in the section titled "xDSL Service."*

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		(DSL) Appendix Pricing;			
AT&T xDSL-4	Should § 5.2 of AT&T's proposed Attachment 25: xDSL be included?	5.2 of AT&T' Proposed Attachment 25: xDSL UTEX Appendix 1 to Attachment 2 Raw Materials UNE (DSL) Appendix Pricing;	UTEX has now returned to its 2005 DSL terms as a result of Order 30. Those terms should be approved...	Yes. This language mirrors the FCC's TRO finding that an ILEC must provide CLECs with "nondiscriminatory access to the same detailed information about the loop that is available to the [ILEC]." *See* 47 C.F.R. §51.319(g) and TRO ¶¶567-568 and FNs 739 and 745.	*This issue is addressed in the text of the Award in the section titled "xDSL Service."*
AT&T Collo-1	What terms and conditions provide the clarity required to order physical and virtual Collocation in accordance with FCC orders?	UTEX /AT&T proposed Attachment 4: Ancillary Functions, AT&T Proposed Virtual Collocation Attachment, AT&T Proposed Physical Collocation Attachment, AT&T Proposed Collocation Pricing, UTEX Proposed Attachment 1: Common Cageless Collocation (RSM and Ethernet), Pricing Appendices addressing Collocation	AT&T has proposed to use its "generic" collocation terms and prices rather than terms flowing from 28821. The Commission has not substantively reviewed these terms under § 252(c) or (e)(2)(B). UTEX has proposed to use the Texas Collocation Tariff, and to use Commission-approved prices for all collocation matters. UTEX has also proposed to continue to have terms related to common cageless collocation of RSMs and Ethernet that are in the current agreement and approved by the Commission in the WCC arbitration. AT&T appealed the Commission's approval of these terms all the way to the 5th Circuit and lost. AT&T has not shown that there has been a change of law, or that different or new circumstances justify removing these terms. This case should stay on focus: the interconnection, intercarrier compensation and signaling, routing and rating of traffic to and from UTEX's non-carrier customers - matters that have never before been addressed in Texas. AT&T's decision to demand use of its generic	Both parties are proposing the language each proposed in 2005. AT&T's language is compliant with FCC orders and is used today in practice with the CLEC industry. As such, AT&T respectfully requests that this Commission approve AT&T's language. As further effort to resolve this issue, AT&T offers the use of the language in ¶¶ 1.0 and 2.0 of the CLEC Coalition Collocation Attachment to replace ALL of UTEX's and AT&T's previously proposed language for Collocation (UTEX/AT&T proposed Attachment 4: Ancillary Functions, AT&T Proposed Virtual and Physical Collocation Attachments, UTEX Proposed Attachment 1: Common Cageless Collocation, UTEX Appendix A, AT&T Proposed Collocation Pricing).	*This issue is addressed in the text of the Award in the section titled "Collocation."*

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Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
			terms for all other matters is patently designed to snarl up this case by injecting numerous issues that have already been previously litigated and disposed in the WCC case, the Alpheus arbitration and Docket 28821. UTEX is making every effort to eliminate all other issues so the Commission's attention can stay on the real issue, the one that it expressly said it would not address in Docket 28821, and the issue the FCC told it to resolve under current law		
AT&T Collo-2	Is AT&T required to provide Collocation for equipment that is not utilized for Interconnection or access to Unbundled Network Elements and what are the appropriate safety standards?	AT&T Physical 9.1.1-9.1.6, Virtual: 1.2, 1.10.2 UTEX Appendix 1, Section 1.1 UTEX Proposed Attachment 1: Common Cageless Collocation (RSM and Ethernet), Pricing Appendices addressing Collocation	See UTEX Position Statement to Collo-1.	AT&T is not required to: install equipment that is not necessary for Interconnection, that does not meet safety requirements as set forth in NEBS or Telcordia documentation or that has a known history of safety problems. AT&T is not and should not be required to deploy on behalf of UTEX or any other CLEC any equipment that is not necessary for the transmission and routing of Telephone Exchange service or Exchange Access. AT&T also should be permitted to enforce its safety standards, which serve to protect AT&T's facilities.	*This issue is addressed in the text of the Award in the section titled "Collocation."*
AT&T Collo-3	Should AT&T be required to maintain multiple processes for Collocation Application requests?	AT&T Physical Section 6.1.4.1, Virtual Section 6.1 UTEX Appendix 1, Section 1.1, Appendix B UTEX Proposed Attachment 1: Common Cageless	See UTEX Position Statement to Collo-1.	No. With input from the CLEC community, AT&T developed a Collocation Application and has made that application available via the web portal for use when transmitting a Collocation Application. The Collocation Application that AT&T sponsors allows for Individualized CLEC requests utilizing a standard process to insure equal and timely treatment of all CLECs.	*This issue is addressed in the text of the Award in the section titled "Collocation."*

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Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
		Collocation (RSM and Ethernet), Pricing Appendices addressing Collocation			
AT&T Collo-4	Should AT&T be required to deploy Remote Switch Modules within an AT&T central office under non-specific circumstances?	UTEX Appendix 1, Section 3.1 UTEX Proposed Attachment 1: Common Cageless Collocation (RSM and Ethernet)	See UTEX Position Statement to Collo-1.	No. Clear, specific language is needed for all products in order to: a) minimize future disputes between the Parties; b) insure network safety and reliability; c) maintain processes that are effective. AT&T's language meets these standards.	*This issue is addressed in the text of the Award in the section titled "Collocation."*
AT&T Collo-5	Should AT&T be required to accept UTEX's proposed pricing for a Collocation Arrangement?	UTEX Appendix 1, Section 3.2, 3.3, 4.3 Appendix 1, Section 4.2 UTEX Appendix A UTEX Proposed Attachment 1: Common Cageless Collocation (RSM and Ethernet Pricing Appendices addressing Collocation	See Position Statement for AT&T Collo-1.	No. AT&T is unaware of where and how UTEX has developed its unsubstantiated rates. They have neither been negotiated nor presented in any formal cost proceedings at this Commission. AT&T' proposed rates are based on cost studies as well as negotiations with CLECs and have been approved in multiple CLECs agreements.	*This issue is addressed in the text of the Award in the section titled "Collocation."*
AT&T Collo-6	Should AT&T be required to manually provide UTEX with a list of acceptable third party installers or may AT&T provide this	UTEX Appendix 1, § 4.01, 4.1 UTEX Proposed Attachment 1: Common Cageless Collocation (RSM	See Position Statement for AT&T Collo-1.	No. The information that UTEX seeks is readily available via the AT&T CLEC On-Line website (listing of AT&T Approved Tier 1 and Tier 2 installation vendors). The CLEC community regularly accesses this website, which is more efficient than the multiple phone calls and manual intervention that UTEX's proposal would require.	*This issue is addressed in the text of the Award in the section titled "Collocation."*

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	information to UTEX online in the same manner as it provides it to all other CLECs?	and Ethernet), Pricing Appendices addressing CollocationA			
AT&T Collo-7	Can AT&T be forced to enter into an ICA appendix that does not expire and therefore perpetuates indefinitely and is not connected to an underlying ICA?	UTEX Appendix 1, Section 5 UTEX Proposed Attachment 1: Common Cageless Collocation (RSM and EthernetPricing Appendices addressing Collocation	See Position Statement for AT&T Collo-1.	No, the FTA states that an agreement must be made available for a reasonable period of time. UTEX's proposal is not reasonable. UTEX's structure is unwieldy, utilizing a separate agreement that extends past the life of the ICA that it is tied to and therefore has no supporting terms and conditions (e.g. Billing, dispute resolution etc.). This Appendix is not appropriate and should be struck in its entirety.	*This issue is addressed in the text of the Award in the section titled "Collocation."*
AT&T Collo-8	Should UTEX have unescorted access to a Collocation area prior to: 1) AT&T's turnover of the area to UTEX and; 2) the time UTEX has obtained the necessary security clearance?	UTEX ATT 16 – Public Safety, Network Security and Law Enforcement, Section 1.5; UTEX ATT 6, Section 1.5 and UTEX's proposed Appendix 1 Section4.01 UTEX Proposed Attachment 1: Common Cageless Collocation (RSM and Ethernet), Pricing Appendices addressing	See Position Statement for AT&T Collo-1.	AT&T's language properly limits UTEX's unescorted access to collocation areas until (a) AT&T has actually turned over the space to UTEX for its use and (b) UTEX has been authorized to access the area and has otherwise been given those devices necessary to grant access. Such a restriction is reasonable and is a general practice in the industry. UTEX may request an escorted walk through if they should desire to see the site.	*This issue is addressed in the text of the Award in the section titled "Collocation."*

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		CollocationA			
SA-1	WITHDRAWN				
AT&T WP-1	Should the WP Appendix be listed as a sub appendix to a UNE? (See UNE Issue #2)	Intro	Order 30 granted AT&T's desire and wish that UTEX be required to go back to its 2005 UNE terms. AT&T now turns around and unfairly attacks the very words it said were required. *UTEX states that it does not require white pages to be treated as a UNE. UTEX Ex. 1, Feldman Direct, at 282:12-13.* *UTEX states that it is not truly concerned about white pages but that any such terms should be just, reasonable, nondiscriminatory, and lawful. UTEX states that it wants the ability to secure directory listings in AT&T's 411 and paper directories if one of its customers desires to have a listing. UTEX Ex. 1, Feldman Direct, at 282:14-23.*	No. White Pages are not UNEs. As discussed in AT&T's UNE Issue 1, AT&T offers Attachment 18 WP from the CLEC Coalition (CC) agreement approved in Docket 28821 for efficient resolution.	*The Arbitrators conclude that the White Pages Appendix should not be listed as a sub-appendix to the UNE appendix. UTEX has not established that white pages meet the requirements for being treated as a UNE, and UTEX's witness stated that UTEX does not require white pages to be treated as a UNE.*
AT&T WP-2	Should the WP Appendix clarify that it covers listings for AT&T and CLEC's mutual local service area?	§§ 1	No. AT&T and UTEX do not have a "mutual local service area."	Yes. AT&T publishes WP directories for the geographic area where it provides local service. AT&T accepts listings for WP publication from CLECs who also provide local service in the same areas. On occasion, as a result of extended area service (EAS) requirements, AT&T will include ILEC listings in a neighboring local service area. In this case, the ILEC provides AT&T with all directory listings, ILEC and CLEC, for that area. The CLEC should not provide those out of area listings to AT&T, or duplicate listings will result.	*The Arbitrators conclude that AT&T Texas's proposed language should be included in the ICA because the Commission approved this language in the Docket No. 28821 CLEC Coalition ICA.*
AT&T WP-3	Should Appendix WP be governed by the same rules and publishing practices that	§2.1	No. This is a Texas agreement.	Yes. AT&T is governed by State PUC rules for publishing WP directories. AT&T adheres to uniform practices such as annual publication schedules and alphabetizing rules. The same rules and practices for Texas WP directories	*The Arbitrators conclude that AT&T Texas's proposed language should be included in the ICA. The Commission approved similar language in the Docket No. 28821 CLEC Coalition ICA, which was also a Texas*

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	govern all AT&T WP publishing?			should apply to UTEX.	*agreement.*
AT&T WP-4	Should the Agreement contain rates, terms and conditions for when a UTEX End User requires and UTEX requests a foreign, enhanced, additional, or non-published listing?	§ 2.1.1	UTEX and AT&T probably have a dispute over what an "end user" is. UTEX's non-carrier customers are end users. Except for when UTEX provides service to a carrier like its CMRS affiliate the patrons that use the services, applications and devices offered by UTEX's customers are not "end users" because they are not receiving a telecommunications service and are instead receiving an enhance/information service or some other non-telecommunications service. AT&T's proposed terms would inappropriately and illegally treat the listings for all of UTEX's customers and their patrons as if they are "foreign" even if the ultimate consumer is physically located in the same local calling area. UTEX has proposed White Pages terms for the only Legacy/POTS application that will be used. UTEX's WP resale terms appear in Resale Appendix 7.3. UTEX would prefer that its Customer's patrons have the ability to insert their information in AT&T's White Pages, but it is simply not possible under the AT&T construct. The reason this is so is that AT&T is focused on tying users to traditional telephone numbers, and using that as some indication of geographic location. This is largely inconsistent with how New Technology customers operate. UTEX, and its customers, on the other hand, are more interested in identifying addressing, presence and the ability to connect using things like a "Callable E-mail address" (see GTC § 51.22) or an IP address or URI. AT&T will not allow a subscriber to list a physical address	Yes. AT&T often encounters end users who seek listings beyond the primary listing for their business or residence –e.g., a business wanting to publish an 800 number, a residential end user wanting a separate listing for a teenager's phone or a listing in bold face or a non-published listing. These "extra" listing products are available to CLEC end users, and should be covered in Appendix WP.	*The Arbitrators conclude that AT&T Texas's proposed language should be included in the ICA. The Commission approved this language in the Docket No. 28821 CLEC Coalition ICA. UTEX has not cited any authority requiring AT&T Texas to provide white pages directory listings for customers that do not have a traditional telephone number. A white pages directory allows a customer to list its telephone number and address. To the extent that UTEX's customers wish to identify themselves in other ways, they may do so using a publication other than AT&T Texas's white pages directory. Furthermore, UTEX has not explained why AT&T Texas should be required to offer different white pages products or services to UTEX's customers than AT&T Texas offers to its own customers.*

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			unless it is tied to a telephone number. AT&T wants the Commission to issue a series of discrete (and sometimes seemingly innocuous) orders that individually and in totality would allow the Legacy/POTS tail to wag the New Technology dog. UTEX says no. UTEX does not necessarily oppose having terms that allow – or even require – the parties to exchange listing information for publication in White Pages. But those terms should reflect the current technology, where users may have a "mobile" number or some other number that ties to multiple devices and applications, or a URI or some other address or identity(ies) they want to advertise. AT&T's proposed terms are totally buried in legacy thinking, and they completely ignore how society is evolving in how they receive communications, and advertise their address, presence and identity. However, with one important qualification UTEX would not strongly oppose insertion of additional White Pages terms (besides Resale) that have been affirmatively approved by the Commission under § 252(e)(2)(B) after an arbitration under § 252(b), and the determinations called for by § 252(c). Therefore, if the Commission believes for some reason that White Pages terms should be included, UTEX would accept, in the alternative the White Pages terms approved in Docket 28821 for CJP, specifically ATTACHMENT 19: WP-O/SOUTHWESTERN BELL TELEPHONE, L.P. The important qualification is that language must be inserted directly stating that the attachment applies only to legacy/POTS traffic and will not have any impact on or		

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			provide any interpretive aide to the language in the ICA that discusses new technology traffic or traffic to or from UTEX's wholesale customers. AT&T has proposed to use its "generic" White Pages terms rather than terms flowing form 28821. The Commission has not substantively reviewed these terms under § 252(c) or (e)(2)(B). This case should stay on focus: the interconnection, intercarrier compensation and signaling, routing and rating of traffic to and from UTEX's non-carrier customers - matters that have never before been addressed in Texas. AT&T's decision to demand use of its generic terms for all other matters is patently designed to snarl up this case by injecting numerous issues that have already been previously litigated and disposed in the WCC case, the Alpheus arbitration and Docket 28821. UTEX is making every effort to eliminate all other issues so the Commission's attention can stay on the real issue, the one that it expressly said it would not address in Docket 28821, and the issue the FCC told it to resolve under current law.		
AT&T WP-5	Should UTEX be required to provide its listings in the format specified in CLEC Online?	§ 2.4	See UTEX Position Statement to WP-4. No, because that format requires New Technology users to somehow mimic legacy POTS users in how they to advertise or how they want to be identified in terms of availability, presence or identity.	Yes. Standard listing formats and procedures must be followed, to reduce risk of errors. Also, FCC Rule 51.217(c)(3) requires listings to be in a "readily accessible" format; the CLEC Online website provides that.	*The Arbitrators conclude that AT&T Texas's proposed language should be included in the ICA. The Commission approved similar language in the Docket No. 28821 CLEC Coalition ICA. The Arbitrators do not agree with UTEX that this language imposes advertising restrictions on UTEX's customers. A white pages directory allows a customer to list its telephone number and address. To the extent that UTEX's customers desire to identify themselves in other ways, they may do so using a publication other than AT&T Texas's white pages directory. Furthermore, UTEX has not*

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					explained why AT&T Texas should be required to offer different white pages products or services to UTEX's customers than AT&T Texas offers to its own customers.
AT&T WP-6	What details regarding listing verifications, directory close, and directory distribution should Appendix WP contain?	§§ 2.5, 2.6, 2.7, 2.8	See UTEX Position Statement to WP-4.	AT&T offers many listing verification tools to CLECs. CLECs must use these tools to submit changes far enough in advance of directory close so that those changes make it into the book. Since AT&T does not charge CLECs for WP directories and delivers them directly to CLEC end users, AT&T's WP distribution method needs to be uniform to reduce risk of delivery errors and delay.	*The Arbitrators conclude that AT&T Texas's proposed language should be included in the ICA. The Commission approved this language in the Docket No. 28821 CLEC Coalition ICA, and UTEX did not explain why that language should not be included in this ICA. UTEX only referred to its response to AT&T DPL issue WP-4. The Arbitrators have addressed UTEX's position on that issue above.*
AT&T WP-7	a) Can UTEX purchase more than one information page per book? b) Should the WP Appendix cross reference prices in Appendix Pricing?	§ 2.9	(a) is not an issue. UTEX does not propose to have more than one information page per book. (b) There should not be any charges for AT&T to include any listings UTEX provides to AT&T. AT&T's proposed terms wrongly do not provide for – or they wrongly attempt to impose a charge for including - alternative forms users may want to advertise or how they want to be identified, such as with a callable e-mail address, a URI or a single number (perhaps even a mobile number).	a) No. AT&T publishes WP directories with listings of many CLECs and ILECs with end users in that city or town. If every CLEC and ILEC purchased more than one information page per book, the book would be filled with dozens of pages of informational material before a single listing was displayed. b) Yes. Rates for all items should appear in a single, uniform Appendix Pricing and not be interspersed in other Appendices.	*a) The Arbitrators conclude that AT&T Texas's proposed language should be included in the ICA. UTEX does not dispute this language.* *b) The Arbitrators conclude that AT&T Texas's proposed language should be included in the ICA. UTEX's response does not actually address this DPL issue. Instead, UTEX reiterates its position on AT&T DPL Issue WP-4. The Arbitrators have addressed UTEX's position on that issue above.*
AT&T WP-8	Should the Appendix address listings to Independent, Third Party Publishers?	§§ 4.0, 4.1, 4.2, 3.1, 3.2	No. If any third party publishers want UTEX information they should contact UTEX.	Yes. AT&T's language defines when and how AT&T will serve as the intermediary for UTEX to request Independent, Third Party publishers. AT&T does not agree to act as the intermediary if it involves extra "surcharges" or one time fees that UTEX wishes to charge the other publishers.	*The Arbitrators conclude that UTEX's proposed ¶ 4.1, regarding rights to and protection of UTEX's subscriber listing information, should be included in the ICA. The Commission approved this language in the Docket No. 28821 CLEC Coalition ICA, and AT&T Texas did not oppose the language.* *The Arbitrators also conclude that AT&T Texas's proposed ¶¶ 3.1 and 3.2 should not be included in the ICA. Under these paragraphs, AT&T Texas would act as the single point of*

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					contact for all independent and third party directory publishers who seek to include UTEX's subscriber listing information in an area directory. In its response to this DPL issue, UTEX states that it does not consent to AT&T Texas acting as the single point of contact for all such publishers. Instead, UTEX states that independent and third party publishers should contact UTEX directly regarding UTEX's subscriber listing information. For this reason, the Arbitrators conclude that UTEX's proposed ¶ 4.2 should be included in the ICA. This paragraph states that, upon UTEX's request, AT&T Texas shall transmit UTEX's subscriber listing information to a third party directory publisher for a one-time administrative fee of $100 per occurrence, per directory publisher, to be paid by UTEX to AT&T Texas. The Arbitrators further conclude that the $100 fee is reasonable. AT&T Texas's proposed language did not require UTEX to pay AT&T Texas any fee in exchange for AT&T Texas's agreement to act as the single point of contact for UTEX. Consequently, UTEX's offer to pay AT&T Texas $100 per occurrence per publisher appears reasonable.
AT&T WP-9	Should the Appendix WP contain an indemnity provision specific to WP listings?	§§ 4.1, 4.2, 4.3, 4.4	No. The general indemnity terms in the GTCs should apply and control.	Yes. The GTCs contain overarching indemnity standards, but WP listings, where the accuracy of listing information is dependent on CLEC inputs, need a topic-specific indemnity.	*The Arbitrators conclude that AT&T Texas's proposed language should be included in the ICA. The accuracy of AT&T Texas's directory listings for UTEX's customers depends in large part upon UTEX providing accurate information to AT&T Texas. The Arbitrators agree with AT&T Texas that it is appropriate to recognize this fact with specific indemnification language addressing the issue. Furthermore, UTEX did not object to indemnifying AT&T Texas with*

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					respect to white pages listings, nor did UTEX object to anything specific in AT&T Texas's language.
AT&T NIM – 1 UTEX Responsive Issues (b , c and d)	AT&T: a) Should the different types of traffic exchanged between the Parties be referenced in this agreement? UTEX: b) Must all technically feasible traffic be identified into discrete categories that accurately reflect current law? UTEX: c) Are all categories of traffic clearly defined in terms of either reciprocal compensation and/or jointly provided access to a knowing third party IXC? UTEX: d) Can AT&T create a new category of	Network Interconnection Methods (NIM) Section 1.1 1.1a 1.2 1.3 UTEX Attachment NIM and all Appendices and Exhibits, including the Call Flow Diagrams	(a) UTEX believes that AT&T's language does not actually attempt to definitively resolve what are all categories of traffic. In particular UTEX believes that AT&T's language purposefully discriminates in an unlawful way against new technology traffic that did not exist at the time of the Act. (b) UTEX's proposed terms – as best as can be done given the requrirement in Order 30 to use 2005 language that does not fully implement several FCC orders regarding intercarrier compensation and particularly the *Core Mandaums Order* appropriately place each kind of traffic into discrete categories that correctly reflect current law, and in particular the § 251(b)(5) status and the § 252(d)(2) cost-based requirement for LEC-LEC traffic termination. AT&T's terms do not. (c) UTEX is an LEC. It provides only Telephone Exchange Service and/or Exchange Access Service. UTEX is not an IXC and does not provide Telephone Toll Service. The parties will exchange only two kinds of traffic in their capacity of LEC. (AT&T Texas may deliver intraLATA Toll traffic to UTEX, but when it does so it is acting as an IXC). There will be traffic that is subject to § 251(b)(5) and a large part of this traffic <u>also</u> falls into the FCC's jurisdiction under § 201. This is "251(b)(5) Traffic." There will be "jointly provided access" when the parties are providing Exchange Access	(a) Yes. Traffic types exchanged between the parties need to be identified and defined, as they are compensated differently. AT&T disagrees with UTEX's language stating that interconnection is for the exchange of "information." Interconnection is for exchange of telecommunications traffic._ b) Yes. While it is not clear what technically feasible traffic is, all traffic exchanged between the parties should be categorized. AT&T and UTEX disagree as to what those categories are. Contrary to UTEX's assertions, AT&T's proposed terms do "precisely, accurately and appropriately place each kind of traffic into discrete categories that accurately reflect current law". c) No. Pursuant to Federal Law and regulatory precedent in TX there are several categories of traffic e.g. 251 (b)(5) Traffic, ISP Bound Traffic, Optional EAS, LEC Carried IntraLATA toll, IXC Carried IntraLATA and InterLATA Toll, and transit traffic. d) AT&T does not propose a new category of traffic. AT&T's proposed language adheres to Federal Law and regulatory precedent that exist in the state of Texas. e) AT&T is not suggesting that the Commission should use any language that is inconsistent with §§ 157, 202, 202, 203, 230, 251 and/or 252 or	*(a) The Arbitrators conclude that the different types of traffic exchanged between the Parties should be referred to in the ICA because traffic type is the basis for determination of intercarrier compensation. The Arbitrators adopt AT&T Texas's proposed language in § 1.1 because it is consistent with FTA § 251(c). The Arbitrators adopt AT&T Texas's proposed language in § 1.1a, but modify the language to include other types of traffic exchanged between the parties and addressed in Attachment 6 to NIM: Intercarrier Compensation. These other types of traffic include ESP traffic, Meet Point Billing Traffic, FGA Traffic, InterLATA Interexchange Traffic, and Cellular Traffic.* *"1.1a Interconnection is the physical joining of two networks for the mutual exchange of <u>ESP traffic</u>, 251(b)(5)/IntraLATA Toll Traffic, <u>Meet Point Billing Traffic, FGA Traffic, InterLATA Interexchange Traffic, and Cellular Traffic</u>."* *The Arbitrators conclude that interconnection is the physical joining of networks for the mutual exchange of specific categories of traffic. UTEX's proposed language in § 1.1a would require interconnection for the mutual exchange of Interconnection traffic that is, in turn, defined in § 1.2 as exchange of "information." The Arbitrators find that the references to "Interconnection Traffic" and "Information" to be vague and not adequately explained by*

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	traffic or use existing categories that can result in a requirement that UTEX purchase a type of access or signaling or both in order to pass traffic as a competitor for types of traffic that did not exist at the time of the Act? UTEX: e) Can the PUC award language that is or could be implemented to obtain results that would violate §§ 157, 202, 202, 203, 230, 251 and/or 252 or the FCC's rules and decisions relating to non-carrier customer traffic and intercarrier compensation?		Service to a Telephone Toll Service provider. This is "carved out" of § 251(b)(5) on a transitional basis on account of § 251(g). This traffic is covered by part 69 of the FCC's access rules. (d) For New Technology and Transit traffic AT&T cannot require UTEX to pay for services as a competing LEC to mutually exchange traffic. The law requires reciprocity and recent changes in law (including the *Core Mandamus* Order) require new and different terms and a different approach that has been used in prior cases. AT&T is required to offer to exchange all "non-access" traffic at $0.0007 per minute of use. It is all § 251(b)(5) and it is all subject to the same price. LECs provide only two products when it comes to interconnection and traffic exchange: Telephone Exchange Service and Exchange Access Service. Wholesale to non-carriers and transit is not Exchange Access. AT&T cannot force UTEX to be an access customer and pay rates that are inconsistent with § 252(d) when the parties are interconnecting as LECs. (e) AT&T's proposed language is quite unclear and it has completely failed and refused to explain its intended results from an operational and financial perspective when it comes to the primary traffic types that will be handled as between the parties. UTEX cannot fully determine just what it is that AT&T has in mind, and AT&T is not talking. To the extent, however, AT&T is proposing to require UTEX or any of its non-carrier customers to be	the FCC's rules and decisions relating to non-carrier customer traffic and intercarrier compensation and AT&T does not believe that its language would do so.	*UTEX. Furthermore, UTEX's proposed language for § 1.3 on what is involved in joining networks for the exchange of traffic is vague and unnecessary and not adequately explained by UTEX. The Arbitrators therefore decline to adopt UTEX's proposed language in §§ 1.1a, 1.2 and 1.3.* *(b)-(d) The Arbitrators find the term "technically feasible" traffic to be ambiguous. The Arbitrators conclude that the terms of the ICA should include the different categories of traffic exchanged between the parties and the appropriate compensation method applicable to each type of traffic. The language approved by the Arbitrators for Attachment 6 to NIM: Intercarrier Compensation addresses the intercarrier compensation for different categories of traffic. The issues related to signaling are addressed elsewhere in the award.* (e) *The Arbitrators find that this issue does not ask for resolution of specific disputed ICA language. The Arbitrators conclude that the language adopted for this ICA is consistent with the relevant sections of the Federal Telecommunications Act and the FCC rules and decisions relating to intercarrier compensation.*

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			involuntarily subjected to any kind of Exchange Access charge regime when neither UTEX nor its non-carrier customers provide Telephone Toll service, then those proposals violate §§ 157, 201, 202, 203, 230, 251 and/or 252 and the FCC's rules and decisions relating to non-carrier customer traffic and intercarrier compensation.		
AT&T NIM – 2 UTEX Responsive issue	AT&T: a) Are physical technologies used for internal communications appropriate methods of interconnection? UTEX: b) What are the technical obligations of signaling, routing, trunking and rating for interconnection and how will calls be signaled, routed, rated and billed?	NIM Sections: 1.4-1.4.5 UTEX Attachment NIM and all Appendices and Exhibits, including the Call Flow Diagrams	UTEX is not sure which UTEX proposal AT&T is addressing regarding internal communications. Any reference to "internal communications" was to fully implement the FCC's definition of "technically feasible" in Rule 51.5 and the requirements of 51.305. "Internal Communications" fits within 51.305, and specifically 51.305(a)(3), for example, if AT&T uses SIP for internal communications or as part of a service to its own customers. If there is "SIP" within AT&T Texas network – now or later - then SIP becomes a mandatory method and form of interconnection under FCC rules and the Act. AT&T has not provided any contract terms to UTEX that identify UTEX's obligations for signaling, routing, trunking or rating that match against UTEX's call flow diagrams. We believe that if AT&T were required to show on a call flow diagram basis how AT&T's language would actually work, the result would show that UTEX and AT&T use the same or similar words, but have different intent. The call flow diagrams provide clarity and certainty and are appropriate for use as AT&T admits.	a) No. Technologies used for internal communications are often not technically feasible methods of interconnection. UTEX's language would allow UTEX to utilize any physical medium for interconnection even if it is not technically feasible. This violates the FTA. b) AT&T believes that this issue is no longer relevant as a result of the rulings in Order 30. If it remains relevant, then AT&T offers the following: While call flow diagrams may be interesting or helpful in some cases, written terms and conditions are legally necessary to establish any and all contract terms, including those regarding the appropriate treatment of intercarrier traffic. Furthermore, UTEX's diagrams are unclear. AT&T has consistently provided language that identified UTEX's obligation for signaling, trunking and rating.	*a) This issue is addressed in the text of the Award in the section titled "Technically Feasible Forms of Interconnection."* *b) This issue is addressed under DPL issue UTEX 31.*
AT&T NIM – 3	AT&T a): Are ISDN, ATM, SS7 and SIP valid methods of	NIM Sections: 1.5, 1.6 UTEX Attachment	UTEX cannot determine which of UTEX's interconnection terms, if any, AT&T is attempting to dispute. (b & c) UTEX has SS7 terms, and when this	a) No. See ATM DPL (NIM4-1). No See SIP DPL (AT&T NIM 5-1) See ISDN DPL NIM-3 (Issues 1-9). SS7 is a signaling protocol used once interconnection is established; it is not	*(a) These issues and associated ICA language are addressed in the text of the Award in the section titled "Technically Feasible Forms of Interconnection."*

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UTEX Responsive issue	Section 251(c)(2) interconnection? UTEX: b) Is signaling part of the duties imposed on LECs under 251(b)(5) and/or § 251(c)(2) and if not how does the Act intend to fairly allow for a competitive provider to interconnect its network to the PSTN for the mutual exchange of traffic? UTEX: c) Can AT&T require UTEX to directly or indirectly purchase signaling services at non-cost based rates in order to compete against AT&T? UTEX: d) Can the PUC award language that is or could be	NIM and all Appendices and Exhibits, including the Call Flow Diagrams	"protocol" is used UTEX must be treated as an "equal" or "peer" under the Act. When it comes to interconnection UTEX is not AT&T's "customer." Interconnection is not a service; it is a duty. If there is any element of interconnection where UTEX is not allowed to be an equal or peer and instead can be relegated to a "customer" role then UTEX requests the PUC to explain its rationale and make an express ruling that signaling is not part of § 251(b)(5) and/or 251(c)(2) and must be purchased by UTEX from either AT&T or a 3rd party who then has to purchase from AT&T. If AT&T is correct in their position, then signaling can not be part of Interconnection under 251(c)(2) with the result that the cost standards in § 252(d) do not apply. This technically can not be a lawful result as signaling between networks is a requirement to mutually exchange traffic. The current situation is anti-competitive in that AT&T can effectively stifle compensation for new technology traffic by requiring non-cost based compensation to pass traffic. Finally the idea that UTEX has to purchase additional network elements or pieces of equipment prior to being able to arbitrate an issue is counter to the whole arbitration process contained in the Act. Nonetheless UTEX has an STP and stands ready to connect it to AT&T's STP right now if AT&T will do it on a reciprocal basis. (d). To the extent AT&T is both requiring SS-7 signaling and then charging for such signaling	used to interconnect. UTEX is confusing the issue of signaling and interconnection. b) The terms and conditions proposed by AT&T are consistent with the parties' rights, duties and responsibilities under §§ 201, 251 and 252 and other authorities. This issue is otherwise vague and not understood by AT&T. AT&T has proposed appropriate signaling terms and conditions. c) UTEX is not entitled to obtain SS7 Links from AT&T pursuant to the ICA. To AT&T's knowledge, UTEX does not own an STP and therefore is not entitled to directly signal with AT&T using SS7 B-Links. UTEX can either use an alternative provider for its signaling needs or can purchase SS7 signaling from AT&T through AT&T's tariffs. d) AT&T believes that this issue is no longer relevant as a result of the rulings in Order 30. If it remains relevant, then AT&T offers the following: AT&T is not suggesting that the PUC should use any language inconsistent with §§ 157, 202, 202, 203, 230, 251 and/or 252 or the FCC's rules and decisions relating to non-carrier customer traffic and intercarrier compensation.	*(b)-(c) These issues and associated ICA language are addressed in the text of the Award in the section titled "Signaling."* *(d) The Arbitrators find that this issue does not ask for resolution of specific disputed ICA language. The Arbitrators conclude that the language adopted for this ICA is consistent with the relevant sections of the Federal Telecommunications Act and the FCC rules and decisions relating to intercarrier compensation.*

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	implemented to obtain results that would violate §§ 157, 202, 202, 203, 230, 251 and/or 252 or the FCC's rules and decisions relating to non-carrier customer traffic and intercarrier compensation?		and requiring it be outside of "Interconnection", then those proposals violate §§ 157, 201, 202, 203, 230, 251 and/or 252 and the FCC's rules and decisions relating to non-carrier customer traffic and intercarrier compensation.		
AT&T NIM – 4 UTEX Counter Statement	AT&T: a) Should UTEX be financially responsible for interconnection facilities on its side of the point of interconnection (POI)? UTEX: b) Should both parties be equally financially responsible for interconnection facilities and trunks on their respective sides of the point of interconnection (POI)?	NIM: Section 1.7 . UTEX Attachment NIM and all Appendices and Exhibits, including the Call Flow Diagrams	UTEX's understanding of the Act is that both parties are responsible for their own respective costs for interconnection and the mutual exchange of traffic. UTEX will bear the costs on its side of the POI and AT&T will bear the costs on its side. AT&T proposes asymmetric obligations which are inconsistent with the Act and its intentions because AT&T appears to be attempting in various ways to force UTEX to bear costs that fall on AT&T's side of the POI. UTEX's language implements this result. In particular AT&T is trying so hard to avoid inclusion of call flow diagrams to detail each side's responsibilities under their respective proposals because the logic diagrams will reveal AT&T's wholly asymmetric and non-reciprocal cost responsibility assignments once their substantive intent is fully understood.	a) Yes. Neither Section 251, nor any other provision of the FTA requires ILECs to provide or be financially responsible for interconnection facilities on the CLEC's side of the POI. b) Each party should be financially responsible for the interconnection facilities and trunks on their respective side of the point of interconnection for section 251 (b) (5) IntraLATA toll traffic.	*(a)-(b) The Arbitrators concur with AT&T Texas that each party should be responsible for all costs on its side of the POI and find no asymmetric obligations in AT&T's proposed language. Call flow diagrams are addressed in the Arbitrators' Decision under DPL issue UTEX 33.* *The Arbitrators find AT&T Texas's proposed language to be reasonable and adopt it.*

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AT&T NIM – 5 UTEX Counter Issue	AT&T : a) Should UTEX be allowed to require AT&T to continue to route its traffic in blocking situations? UTEX: b) Can AT&T block UTEX's 500 numbers?	NIM Section: 1.8 UTEX Attachment NIM and all Appendices and Exhibits, including the Call Flow Diagrams	Blocking is an issue. The FCC has made clear that no party may purposefully block calls to other parties by refusing to perform switch translations or simply refusing to route. UTEX understands there may be congestion issues, but that is not the issue that was addressed by the 1.8. AT&T has refused to route calls originating on its network that are addressed to numbering resources assigned to UTEX. AT&T is unlawfully blocking and in particular blocking a number block (UTEX 500 numbers) that was specifically assigned to UTEX with FCC consent for the mutual exchange of new technology traffic AFTER the 2005 contract proposals. AT&T cannot require UTEX to become an access customer of AT&T's merely so that UTEX can use numbering resources assigned by the FCC that were allocated to UTEX with the express and explicit understanding they would be used to provide Telephone Exchange and/or Exchange Access service to non-carrier New Technology providers. Requiring this in the context of a new Arbitration would be counter to the intent of the Act.	a) No. There are situations in which AT&T would inform UTEX of potential blocking due to trunk overutilization. In these situations, UTEX would be required to augment its trunk groups in order to remedy the overutilization and potential blocking of traffic. b) AT&T believes that this issue is no longer relevant as a result of the rulings in Order 30. If it remains relevant, then AT&T offers the following: No AT&T is not blocking UTEX's 500 numbers, as this Commission has previously stated in Docket 33323, if UTEX wants AT&T to establish these 500 numbers then UTEX should purchase the Access Tariff service from AT&T to establish these 500 numbers.	*(a)-(b) This issue is addressed in the text of the Award in the section titled "500 Service."*
AT&T NIM - 6	AT&T: a. Should UTEX be allowed to combine originating 251(b)(5) Traffic, intraLATA toll traffic, and interLATA toll	NIM Section: 1.9 UTEX Attachment NIM and all Appendices and Exhibits, including the Call Flow Diagrams	UTEX does not oppose segregating traffic by type onto specific trunk groups. The parties' disagreement is over the type classifications and where the respective trunks should go. UTEX is quite happy to use separate trunk groups for Transit and for New Technology traffic.. AT&T wishes to require uncertainty with respect to the expected "billing" outcome of both	a. No. To ensure that UTEX and AT&T are properly compensated for Section 251(b)(5), intraLATA Exchange Access, and interLATA Exchange Access, these different traffic types must be separated into different trunk groups. b. AT&T believes that this issue is no longer relevant as a result of the rulings in Order 30.	*(a) The Arbitrators concur with AT&T Texas that these types of traffic should not be carried on the same trunk group because it would complicate or make impossible appropriate intercarrier compensation, and therefore adopt AT&T Texas's proposed language.*

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Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
	traffic on the same trunk group? b. UTEX: Can UTEX require certainty with respect to the intent of the arbitrated language by requiring an agreement that the trunk groups reflect the arbitrated result with respect to new technology traffic and with respect to transit?		new technology traffic to and from non-carriers as well as with transit traffic. UTEX requests clear resolution of how to treat all traffic and segregation of the traffic at issue would be a reasonable method to ensure the arbitrated result of how to treat this traffic can be implemented. .		*(b) The trunking requirements for ESP Traffic is addressed in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers" and the trunking requirements for transit traffic is addressed under DPL issue AT&T ITR-1.*
AT&T NIM – 7 UTEX Responsive Issue	AT&T: a. Should UTEX be required to use AT&T's ordering forms and follow its guidelines described via the CLEC Online Website in order to request products from AT&T? AT&T: b. Should UTEX pay the same ordering	NIM Section: 2.1 UTEX Attachment NIM and all Appendices and Exhibits, including the Call Flow Diagrams	(a) and (c) UTEX does not oppose using any mechanized system or system that actually works to our mutual satisfaction. However our direct experience with AT&T shows us that AT&T will utilize the fact it may be unprepared to implement an arbitration award to actually deny the award. For instance, AT&T has admitted in discovery that it has no current way to implement "Signaling" as an interconnection obligation. AT&T will only sell it as a service because that is how AT&T's systems treat all signaling today. Thus if signaling is determined to be a reciprocal requirement for and a part of Interconnection, UTEX will need the ability to require AT&T to provision its side.	a. Yes, UTEX should be required to utilize industry standard ordering procedures. Nevertheless, it is not appropriate to address ordering system implementation in the Interconnection appendix. AT&T addresses this in the CLEC Handbook on the AT&T TEXAS CLEC Website. UTEX is attempting to disregard industry guidelines established for all CLECs. AT&T utilizes industry standard ordering processes such as the Local Service Request ("LSR") process and the Access Service Request ("ASR") process. LSR order submission is standard industry process for ordering local exchange services while ASR process is industry standard process for ordering access services. Both LSR and ASR processes	*This issue is addressed in the text of the Award in the section titled "OSS and Ordering."*

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Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
	charges paid by all other CLECs? UTEX: c. Does AT&T's OSS actually implement the terms of the contract and if not, can AT&T use the fact that its OSS doesn't work to deny UTEX its rights? UTEX: d. Can either side charge for service orders related to "Interconnection" if that party has cost responsible for its own facilities?		AT&T cannot be given the ability to unilaterally impose duties or change contact terms by crafting something and putting it up on a web site. That is not a bilateral contract. What AT&T is wholly ignoring is that when it comes to interconnection UTEX is a LEC and a peer; it is not an AT&T customer that is or can be required to buy some "product." (b) and (d) AT&T cannot impose charges for incurring costs that relate to facilities/trunks, including the ordering and provisioning, that lie on its side of the POI. If AT&T can impose ordering charges on UTEX, then UTEX should be able to impose charges on AT&T for the activities UTEX must undertake to order and provision facilities/trunks on UTEX's side of the POI.	have been collaboratively designed and refined within the Ordering and Billing Forum ("OBF") committee of the Alliance for Telecommunications Industry Solutions ("ATIS"). ATIS is an industry standards group that, per its website, "prioritizes the industry's most pressing, technical and operational issues, and creates interoperable, implementable, end to end solutions -- standards when the industry needs them and where they need them". The OBF is the industry standards body responsible for designing the ordering and billing process standards that all telephone companies, with the possible exception of UTEX, have agreed to follow. b. Yes. Manual and/or electronic charges are applied to each interconnection-related order ("ASRs"). That is, there are costs associated with the processing of both LSRs and ASRs and AT&T has the right to recover those costs from the cost causer. It is no different than if AT&T were to submit an LSR or an ASR to a CLEC. In that case the CLEC charges AT&T for processing AT&T's request. Such ordering charges are simply a cost of doing business. c. Yes. The terms and conditions of the agreement proposed by AT&T provides UTEX adequate mechanisms for ordering all services available under the agreement. Additionally, AT&T completely rejects UTEX's unsupported assertion that AT&T's OSS "doesn't work". In fact, the millions of CLEC LSRs and ASRs that have been successfully processed by AT&T's OSS during the last decade are more than	

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				enough proof that UTEX is playing fast and loose with the facts. d. Yes. (See answer to NIM-7 b).	
AT&T NIM - 8	AT&T: a. Should UTEX be required to follow Industry wide ordering processes and procedures as detailed in the AT&T CLEC Handbook and AT&T Prime ACCESS? AT&T: b. Should AT&T be required to provision an order which has been improperly submitted and/or fails to define a product or service offering that currently resides within an ICA? UTEX: c. Can AT&T deny UTEX its rights through unilaterally created	NIM Sections: 2.2, 2.2.1, 2.3, 2.3.1, 2.3.2 UTEX Attachment NIM and all Appendices and Exhibits, including the Call Flow Diagrams	(a), (b) and (d) UTEX does not oppose using any mechanized system or system that actually works to our mutual satisfaction. However our direct experience with AT&T shows us that AT&T will utilize the fact it may be unprepared to implement an arbitration award to actually deny the award. For instance, AT&T has admitted in discovery that it has no current way to implement "Signaling" as an interconnection obligation. AT&T will only sell it as a service because that is how AT&T's systems treat all signaling today. Thus if signaling is determined to be a reciprocal requirement for Interconnection, UTEX will need the ability to require AT&T to provision its side. (c) AT&T cannot be given the ability to unilaterally impose duties or change contact terms by crafting something and putting it up on a web site. That is not a bilateral contract. What AT&T is wholly ignoring is that when it comes to interconnection UTEX is a LEC and a peer; it is not an AT&T customer that is or can be required to buy some "product."	a. Yes. For Interconnection, CLECs are required to fill out and submit the Industry accepted ASRs to AT&T. (See answer to NIM-7 a regarding ATIS and OBF). UTEX is attempting to disregard the industry guidelines established for all carriers. Again, it is not appropriate to address implementation in this appendix. b. No. CLECs are required to request products and services currently existing and defined in their ICA and follow the ordering guidelines in the CLEC Handbook or AT&T PRIMEACCESS. It is the sole responsibility of the CLEC to submit a complete and error free LSR or ASR on behalf of its customer. UTEX wants AT&T to perform due diligence for UTEX by correcting UTEX's ordering mistakes. AT&T cannot simply correct a CLEC's erroneously submitted LSR or ASR, but must reject the request back to the CLEC so the CLEC can correct the request on behalf of its end user. c. AT&T rejects UTEX's assertion that AT&T has denied UTEX its rights or that AT&T has "unilaterally created procedures that do not conform to the act.". AT&T's OSS has been developed in collaboration with other industry representatives in the OBF collaborative. Additionally, AT&T collaboratively develops local ordering procedures via the CLEC User Forum ("CUF") and the Change Management	*This issue is addressed in the text of the Award in the section titled "OSS and Ordering."*

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	procedures that do not conform to the Act? UTEX: d. Can UTEX require a manual order in circumstances where no mechanized order capability exists? What are the appropriate liquidated damages in situations where AT&T breaches the contract?			Process ("CMP") collaborative. The CUF and CMP are monthly collaborative meetings open to all CLECs doing business in AT&T's local footprint. UTEX is free to attend these meetings and request the development of ordering processes for new services. d. AT&T believes that this issue is no longer relevant as a result of the rulings in Order 30. If it remains relevant, then AT&T offers the following: AT&T provides industry standard manual ordering forms in order for CLECs to order services under the agreement. Those forms are available to all CLECs via the CLEC Online website at https://clec.att.com/clec/. It is not appropriate to address liquidated damages in this appendix.	
AT&T NIM – 9 UTEX Responsive Issue	Should UTEX have unilateral control over the meaning to be given NIM terms when they conflict with other terms in the Agreement? (b) Is AT&T's intent on the purpose of language clear?	NIM: Section 3.0 UTEX Attachment NIM and all Appendices and Exhibits, including the Call Flow Diagrams	UTEX desires to make sure that the signaling, routing, trunking and rating issues related to new technology traffic are resolved in this arbitration. Further, UTEX's direct experience creates a legitimate concern that AT&T places language in various sections of the agreement where the intent is not disclosed and then later interprets such language to have an intent that UTEX was unaware of. Thus for language that we do not understand or that is not explained, UTEX wishes to minimize its potential impact on important issues that we arbitrate. In direct response to AT&T's issue, it is quite common for an Attachment dealing with a specific to take precedence over generalities	No. If the Parties disagree over the meaning of NIM terms and conditions, the Dispute Resolution provisions of the ICA should be applied. b) and c) It is unclear which language UTEX is referring to.	*(a) The Arbitrators find AT&T Texas's language to be reasonable and adopt it for this ICA.* *(b)-(c) The Arbitrators agree with AT&T Texas that it is unclear which language UTEX is referring to and therefore take no action.*

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	(c) If not, can UTEX require that language intent either be made clear or that vague language can not be later interpreted by AT&T to create disputes in the future?		stated elsewhere. The fact is AT&T routinely asserts the unilateral right to control meaning and application over the CLEC's objection and the PUC has allowed this to happen. This provision is expressly intended to shift control to UTEX and away from AT&T. (b) and (c) AT&T's intent and purpose is wholly unclear and to the extent it attempts to require UTEX to occupy the rule of a customer purchasing some product then it violates the Act since this topic involves interconnection and traffic exchange, which means that UTEX is a peer, not a customer.		
AT&T NIM 1 – 2	Does Section 251(c)(2)'s duty to interconnect require AT&T to offer services and products available to AT&T's or its affiliates' end users?	Appendix 1 to NIM: Physical Methods of Interconnection (NIM-1) Section 1.0	UTEX seeks to interconnect; it does not want a product or service. But if AT&T has a particular product or service, or provides something to itself, then AT&T must interconnect with CLECs using the underlying technology and interfaces and methods. That is the point of the FCC's definition of "technically feasible" in Rule 51.5 and the express result under Rule 51.305.UTEX cannot determine which specific UTEX interconnection terms, if any, AT&T is attempting to dispute.	No. Section 251(c)(2) obligates the ILEC to provide interconnection within its network to CLECs. This obligation does not extend to non ILEC affiliate(s) who may offer various products to end users. UTEX's language would allow UTEX to utilize any physical medium for interconnection even if it is not technically feasible. This violates the FTA.	*The Arbitrators adopt AT&T Texas's proposed language because it is reasonable.* *The Arbitrators find that UTEX's proposed language is substantively the same as it proposed in NIM §1.4.5, and decline to adopt it for the reasons set forth in the text of the Award in the section titled "Technically Feasible Forms of Interconnection."*
AT&T NIM 1 - 3	a. Should UTEX be required to interconnect with AT&T within AT&T's network? b. Should AT&T's Non-Telco affiliates be required to enter into 251/252	NIM-1 All of Section 2	(a) UTEX does not understand if or why this is an issue and does not understand AT&T's intent behind raising this issue. UTEX is seeking terms that will govern interconnection and traffic exchange for those kinds of traffic that can be exchanged between two LECs under §§ 201, 202, 251 and 252. UTEX is proposing to connect within AT&T's network, although UTEX does want the right to use Entrance Facilities at TELRIC prices like the FCC expressly held must be made available. UTEX seeks to interconnect; it does not want a	In Section 2.1.1 AT&T agreed to UTEX's proposed term "economically." a. Yes. 47 CFR § 51.305 requires an ILEC to provide interconnection with its network at any technically feasible point *within* the ILEC's network.. Points located between UTEX's premises and tandem or end offices are not within AT&T's network. b. No. §251/252 interconnection is an obligation of the Telco, not non-Telco affiliates.	*(a) and (c) The Arbitrators find that AT&T Texas's language in §§ 2.0-2.1 is consistent with that adopted for the CLEC Coalition ICA in PUC Docket No. 28821. The Arbitrators therefore adopt AT&T Texas's proposed language.*

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	interconnection arrangements? c What type of trunk groups should be allowed over the Fiber Meet Point?		product or service. But if AT&T has a particular product or service, or provides something to itself, then AT&T must interconnect with CLECs using the underlying technology and interfaces and methods. That is the point of the FCC's definition of "technically feasible" in Rule 51.5 and the express result under Rule 51.305.UTEX cannot determine which specific UTEX interconnection terms, if any, AT&T is attempting to dispute. UTEX is proposing to interconnect within AT&T's network, although UTEX also has the right to obtain facilities to get there – for interconnection purposes – under § 251(c)(2), using the cost standards in § 252(d), under FCC rules. (b) UTEX is not asking the PUC to requite AT&T's "Non-Telco" affiliates to enter 251/252 interconnection arrangements. AT&T's contract references are outdated, and UTEX cannot determine which of UTEX's interconnection terms, if any, AT&T is attempting to dispute. (c) The meet point is where facilities join. Then trunks designed to handle various traffic types – including jointly provided access – are established. If AT&T is contending that the facilities and trunks associated with the meet-point cannot handle Exchange Access traffic that goes over trunks to AT&T's access tandem so the parties can jointly provide access then it is most certainly incorrect. Exchange Access is an LEC function, and a CLEC can interconnect under § 252(c)(2) in order to provide exchange access. The FCC expressly so held in the *Local Competition Order* and this result is plainly required by § 251(c)(2).	c. Fiber Meet Point is used for the mutual exchange of traffic between the Parties. Therefore AT&T properly requires that only Local Interconnection Trunk Groups be provisioned over this facility.	*(b) This issue is addressed in the text of the Award in the section titled "Technically Feasible Forms of Interconnection."*

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AT&T NIM 1 - 4	What terms and conditions should govern Collocation?	UTEX Appendix Ancillary Functions - Collocation, Ancillary Appendix 1 RSM/Ethernet NIM-1: 3.0, 3.1	UTEX's terms address collocation.	Collocation is a means of establishing interconnection with AT&T and should not include 3rd party arrangements. If UTEX desires to interconnect via collocation, it should adhere to the terms and conditions in the Collocation appendix.	*This issue and associated ICA language are addressed in the text of the Award in the section titled "Collocation."*
AT&T NIM 1 - 5	May UTEX lease facilities outside AT&T's network at UNE rates for interconnection?	NIM-Sections: 14.0	If AT&T is referring to a reference to and use of the § 252(c)(1) pricing standard when facilities are required for interconnection then that is entirely appropriate. The FCC made clear in the *TRO/TRRO* that §§ 251(c)(2) and 251(c)(3) are different requirements and facilities and capabilities that are not available as UNEs must be made available for interconnection, at TELRIC rates. The courts have upheld this holding.	No. The Commission has determined that UNE rates are inappropriate for leased facilities used for interconnection.	*The Arbitrators could not locate NIM Section 14.0, but note that the section referred to in the Direct Testimony of J. Scott McPhee (AT&T Ex. 15) for this DPL issue is NIM Appendix 1, § 4.0.* *The Arbitrators note that the FCC has found that facilities outside of the ILEC's local network that connect a competing carrier's network with the ILEC's network should not be considered part of the dedicated transport network element subject to unbundling. (Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competitive Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-388, 96-98, 98-147, Order, FCC 03-36 ¶ 366 (Aug. 21, 2003) (Triennial Review Order)). Accordingly, the FCC eliminated entrance facilities as UNEs. (Id. ¶ 366 n.1116). Therefore, the Arbitrators conclude that pursuant to FCC Rule, 47 C.F.R. §51.319(e)(2), AT&T Texas is not obligated to provide UTEX with unbundled access to*

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					entrance facilities. Furthermore, the Commission concluded in Docket No. 28821 that entrance facilities are not available at TELRIC rates for purposes of interconnection. (Docket No. 28821, Arbitration Award –Track 1 Issues at 15-16. (February 22, 2005)). *The Arbitrators, therefore, modify UTEX's proposed language in §§ 4-4.1.1:* *4. Leasing of AT&T TEXAS' Facilities* *4.1.1 UTEX will have the option to lease interconnection facilities at the rates found in Appendix Pricing UNE - Schedule of Prices. It is expressly understood that such leasing is to effect § 251(c)(2) interconnection and is not access to a UNE under § 251(c)(3), notwithstanding the reference to the rates in the price schedule. However, UTEX may not lease AT&T Texas's facilities outside AT&T Texas's network for purposes of interconnection at TELRIC rates found in Appendix Pricing UNE - Schedule of Prices if such facilities are no longer classified as UNEs.* *However, consistent with the Commission's conclusion in Docket No. 28821 that the cross-connects associated with entrance facilities used for interconnection should be provided at TELRIC rates, AT&T Texas shall provide cross-connects associated with entrance facilities at*

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					TELRIC rates. (Docket No. 28821, Order on Clarification and Reconsideration at 3-4 (May 11, 2005)). The Arbitrators, therefore, adopt UTEX's proposed language in §§ 5-5.1 that requires AT&T Texas to provide cross-connects for interconnection at TELRIC rates.
AT&T NIM 1 - 6	Should UTEX have unilateral control over the meaning to be given NIM terms when they conflict with other terms in the Agreement?	NIM-Section: 16.0	This is a repeat of NIM 1-5. See UTEX's Position Statement to NIM 1-5.	No. If the Parties disagree over the meaning of NIM terms and conditions the Dispute Resolution provisions of the ICA should be applied.	*The Arbitrators could not locate NIM Section 16.0 but note that the section referred to in the Direct Testimony of J. Scott McPhee (AT&T Ex. 15) for this DPL issue is NIM Appendix 1, § 6.0. The Arbitrators find AT&T Texas's language in NIM Appendix 1, § 6.0 to be reasonable and adopt it.*
AT&T NIM 2 - 1	a. Should the definition of Points of Interconnection (POI) be included in the agreement? b. Should the definition of Tandem Serving Area be included in the agreement? c. Is SS7 a valid form of Interconnection? UTEX Counter Issue (c) Is signaling an	Appendix 2 to NIM: Interconnection Procedures. (NIM-2) 1.1-1.1a; SPOI Handbook	(a) UTEX's terms do address the POI. (b) This reference is not necessary and it is irrelevant to the POI issue, since it pertains to the trunks that go through it, unless AT&T is trying to require multiple POIs in the LATA or shift costs for facilities on AT&T's side of the POI to UTEX – in which case they are unlawful. (c Both parties) Signaling is simply a sub-part of "interconnection." Without signaling, traffic cannot pass. AT&T's obvious preference for signaling is SS-7 (for example they oppose SIP). AT&T is essentially playing a word game with the Act by pretending that a call can be exchanged without signaling, and then requiring anti-competitive terms for "signaling" outside of the requirements of the Act. This is unlawful and anti-competitive. UTEX is not confused at all, signaling is a requirement, both legally and technically, for interconnection. When two LECs compete, their networks are to	a. Yes. AT&T's language defines POIs, where they may be located and the need to establish additional POIs. b. Yes. This definition clarifies the meaning of a term used throughout AT&T's Attachment NIM. c. No. SS7 is a signaling protocol used once interconnection is established; it is not used to interconnect. UTEX is confusing the issue of signaling and interconnection.	*(a)-(b) Definitions of the terms are addressed under GTC – 61.* *(c) This issue and associated ICA language are addressed in the text of the Award in the section titled "Technically Feasible Forms of Interconnection."*

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	obligation in order to mutually exchange traffic and if so is mutual provision of SS7 signaling a duty when the parties interconnect using SS7?		interconnect with mutual cost recovery being reciprocal, AT&T's proposal requires asymmetric treatment.		
AT&T NIM 2 - 2	Should this attachment detail the need for UTEX to establish additional POIs when UTEX reaches the appropriate threshold of traffic?	NIM-2: Sections 1.1b, 1.1c, 1.1d, 1.1e, 1.1f	UTEX does not oppose allowing AT&T to request additional trunk groups and additional capacity as long as AT&T agrees to pay for all elements on its side of the Interconnection POI and AT&T engages in Direct Signaling with UTEX and AT&T does not create ordering charges. Otherwise AT&T can raise costs on UTEX. Finally we will require that no changes in adding trunk groups result in AT&T blocking calls to UTEX or UTEX's customers.	Yes. The PUC recognized in Docket 28821 that, while a single POI may be appropriate for entry into a new market, there is a point at which a single POI is no longer adequate and additional POI(s) are needed.	*The Arbitrators adopt AT&T Texas's proposed language because it is reasonable.*
AT&T NIM 2 - 3	Should UTEX be required to interconnect with AT&T within AT&T's network	NIM-2: Section 1.2	This is a repeat of NIM 1-3. See UTEX's Position Statement to NIMK 1-3.	Yes. 47 CFR § 51.305 requires an ILEC to provide interconnection at any technically feasible point *within* the ILEC's network. Points located between UTEX's premises and tandem or end offices are not within AT&T's network and are not valid POIs. In § 1.2 AT&T agrees with UTEX's language "including" and "local tandems, access tandems, end offices."	*This issue and associated ICA language are addressed under DPL issue AT&T NIM 1-3(a).*
AT&T NIM 2	AT&T: a) Should AT&T's	NIM-2: Section: 2.0	(a) UTEX wants all traffic clearly defined and to the degree any traffic is uniquely rated UTEX	a. Yes. AT&T proposes the insertion of this definition to clarify a term used throughout	*a) The Arbitrators note that AT&T Texas's proposed definition of §251(b)(5)/IntraLATA*

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– 4 UTEX counter - statement	definition of §251(b)(5)/IntraLATA Toll Traffic be included in this attachment? AT&T: b) Should this Attachment 2 to NIM contain terms and conditions for Reciprocal Compensation? UTEX: c) Can the PUC award language that is or could be implemented to obtain results that would violate §§ 157, 202, 202, 203, 230, 251 and/or 252 or the FCC's rules and decisions relating to non-carrier customer traffic and intercarrier compensation?		wishes separate trunk groups for such traffic. UTEX will not be delivering any intraLATA Telephone Toll Traffic to AT&T where UTEX is the intraLATA Telephone Toll PIC. UTEX is not a Telephone Toll provider. (b) UTEX insists that clear compensation terms for all traffic is part and parcel of this agreement. AT&T's contract references are outdated, and UTEX cannot determine which of UTEX's interconnection terms, if any, AT&T is attempting to dispute. (c) AT&T's proposed language is quite unclear and it has completely failed and refused to explain its intended results from an operational and financial perspective when it comes to the primary traffic types that will be handled as between the parties. UTEX cannot fully determine just what it is that AT&T has in mind, and AT&T is not talking. To the extent, however, AT&T is proposing to require UTEX or any of its non-carrier customers to be involuntarily subjected to any kind of Exchange Access charge regime when neither UTEX nor its non-carrier customers provide Telephone Toll service, then those proposals violate §§ 157, 201, 202, 203, 230, 251 and/or 252 and the FCC's rules and decisions relating to non-carrier customer traffic and intercarrier compensation.	AT&T's Attachment NIM/ITR. b. No. UTEX's proposed compensation language is vague and does not specify the appropriate compensation for different types of traffic. Compensation terms and conditions should not be in an Interconnection appendix. AT&T addresses compensation in Appendix 6 to NIM Compensation DPL. c) See Response to Issue NIM-3(d) above.	*Toll Traffic does not appear in § 2.0. However, AT&T Texas has proposed a definition for §251(b)(5)/IntraLATA Toll Traffic in §2.14 of Appendix ITR. The Arbitrators conclude that it is important to define applicable traffic exchanged between the parties but decline to adopt AT&T Texas's proposed definition. Instead, the Arbitrators adopt the definition approved in Docket No. 28821 for the CLEC Coalition Agreement, as follows.* *"'Section 251(b)(5)/IntraLATA Toll Traffic' shall mean for purposes of this Attachment, (i) Local Traffic, (ii) ISP-Bound Traffic, (iii) Optional EAS traffic, (iv) FX traffic, (iv) Transit Traffic, (v) IntraLATA Toll Traffic originating from an end user obtaining local dialtone from CLEC where CLEC is both the Local Traffic and intraLATA toll provider, and/or (vi) IntraLATA Toll Traffic originating from an end user obtaining local dialtone from AT&T Texas where AT&T Texas is both the Local Traffic and intraLATA toll provider."* *The Arbitrators find that the traffic exchanged between the parties is not limited to § 251(b)(5)/IntraLATA Toll Traffic. Such traffic also includes ESP Traffic, Meet point Traffic, FGA Traffic, InterLATA Interexchange Traffic, and Cellular Traffic.* *(b) The Arbitrators conclude that Attachment 2 to NIM should not contain terms and conditions for reciprocal compensation given that compensation terms and conditions are addressed in Attachment 6 to NIM: Intercarrier*

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Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
					Compensation. *(c) The Arbitrators find that this issue does not ask for resolution of specific disputed ICA language. The Arbitrators conclude that the language adopted for this ICA is consistent with the relevant sections of the Federal Telecommunications Act and the FCC rules and decisions relating to intercarrier compensation.*
AT&T NIM 2 - 5	Should UTEX be allowed to unilaterally decide whether a direct end office trunk group should be established as a primary high?	NIM-2: Sections 2.2-2.2.1 AT&T ITR Section 4.3, 4.4	UTEX cannot determine which of UTEX's interconnection terms, if any, AT&T is attempting to dispute. UTEX does not oppose allowing AT&T to request additional trunk groups and additional capacity as long as AT&T agrees to pay for all elements on its side of the Interconnection POI and AT&T engages in Direct Signaling with UTEX and AT&T does not create ordering charges. Otherwise AT&T can raise costs on UTEX. Finally we will require that no changes in adding trunk groups result in AT&T blocking calls to UTEX or UTEX's customers. However, UTEX does not believe the language referenced by AT&T implements the AT&T stated intent and thus we oppose their language.	No. Although UTEX agrees to establish Direct End Office Trunk Groups when End Office § 251(b)(5)/IntraLATA Toll Traffic requires 24 or more trunks, AT&T's language specifies when the DEOT should be established as either a Primary High or Direct Final. Without this language, misrouting of overflow traffic could occur.	*The Arbitrators find AT&T Texas's argument to be reasonable and adopt its language.*
UTEX NIM 2-A (ITR)	WITHDRAWN				
AT&T NIM 2 - 6	a. Should UTEX be allowed to incorporate its own unique ordering and	NIM-2: Sections 2.3 2.3.1 2.3.2	(a) UTEX is willing to use common forms and procedures so long as they work and do not operate to overrule or change the terms and requirements in the ICA or require UTEX to waive its rights. UTEX cannot determine which	(a) No. CLECs are required to fill out and submit the Industry accepted ASRs to AT&T for interconnection. UTEX disregards industry guidelines established for all CLECs and tries to create processes that may not be technically	*(a)-(b) This issue is addressed in the text of the Award in the section titled "OSS and Ordering."* *(c) This issue and associated ICA language are*

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Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
	provisioning processes for requesting Interconnection trunks and facilities? b. Should UTEX be required to use AT&T's ordering forms and follow its guidelines described via the CLEC Online Website in order to request those products it seeks to obtain from AT&T? c. Is SS7 a valid form of Interconnection?		of UTEX's interconnection terms, if any, AT&T is attempting to dispute. (b) AT&T cannot be given the ability to unilaterally impose duties or change contact terms by crafting something and putting it up on a web site. That is not a bilateral contract. What AT&T is wholly ignoring is that when it comes to interconnection UTEX is a LEC and a peer; it is not an AT&T customer that is or can be required to buy some "product." UTEX cannot determine which of UTEX's interconnection terms, if any, AT&T is attempting to dispute. (c) This is the same issue as presented in NIM 2-1. See UTEX's Position Statement on NIM 2-1(c).	feasible. It is not appropriate to include implementation in the Interconnection appendix. Implementation is addressed in the CLEC Handbook and the CLEC Website. (b) Yes. CLECs are required to request products and services currently existing and defined with their ICA and follow the ordering guidelines as set forth in the CLEC Handbook or AT&T PRIMEACCESS. (c) See NIM 2-1.	*addressed in the text of the Award in the section titled "Technically Feasible Forms of Interconnection."*
AT&T NIM 2 - 7	a. Is SS7 a valid form of Interconnection? b. Is ISDN PRI a valid form of Interconnection? c. Are physical technologies used for internal	NIM-2: Sections: 2.4-2.4.1 UTEX Attachment NIM Appendix 3 (ISDN Interconnection	(a) UTEX does not currently understand the intent of this issue or if there is still an issue. UTEX cannot determine which of UTEX's interconnection terms, if any, AT&T is attempting to dispute. UTEX's response is that interconnection of signaling networks is required by and part of § 251(b)(5) and/or § 251(c)(2) and the cost standards in § 252(d) apply. Further the FCC's rules require interconnection of signaling networks, and so does PUC Subst. R. 26.272(d)(2)(B) and (C).	a. No. SS7 is a signaling protocol used when interconnecting and not a form of interconnection. UTEX confuses signaling protocol with interconnection. b. AT&T believes that this issue is no longer relevant as a result of the rulings in Order 30. If it remains relevant, then AT&T offers the following: No. IDSN is not a form of Interconnection and AT&T should not be required to utilize an AT&T retail switching	*(a)-(e) This issue and associated ICA language are addressed in the text of the Award in the section titled "Technically Feasible Forms of Interconnection."*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
	communications appropriate methods of interconnection? UTEX Issues (d) Is ISDN PRI a Technically feasible method of Interconnection? (e) Is ATM a Technically Feasible Method of Interconnection?		(b) .The PUC has previously held that ISDN is a valid form of interconnection and that it is technically feasible. (c) is a repeat of NIM 2(a). See UTEX's Position Statement to NIM 2(a) (d) UTEX/WCC won the right to interconnect via ISDN PRI in 1997. SBC has refused to implement the terms. UTEX modified the terms which SBC addressed in Dispute Resolution and in these negotiations. SBC simply does not want to implement the award and requests a rehearing. (From 2005 Technically Feasible Interconnection Methods DPL) (e) SBC refused to answer the initial question proposed by UTEX (Does SBC have ATM in its Network?) This refusal to discuss effectively stopped progress on this concept. To the degree SBC is the underlying provider of ATM services to large entities and its own affiliates (Like the Gigaman Services to Colleges and services provided to its affiliates) ATM Interconnection for mutual exchange of traffic represents a cost effective way to pass traffic. These actions are anti-competitive especially in smaller markets. (From 2005 Technically Feasible Interconnection Methods DPL)	service to be used for interconnection purposes. If this Commission determines that ISDN Interconnection should be allowed, UTEX should be required to adhere to all restrictions and requirements outlined in Dockets 29944 and 33323. c. No. Technologies used for internal communications are often not technically feasible methods of interconnection. UTEX's language would allow UTEX to utilize any physical medium for interconnection even if it is not technically feasible. This violates the FTA. d. No. See AT&T NIM-3 Issues 1-9. e. No. See AT&T NIM-4 Issue 1. .	
AT&T NIM 2 - 8	AT&T: a. Should UTEX be allowed to begin interconnection prior to submitting the appropriate orders, forms,	NIM-2: Section: 3.1	UTEX is not certain which UTEX proposed terms AT&T contests. AT&T's issues are intentionally vague and nowhere does AT&T specifically state what an "appropriate" order is, what an "appropriate" form is, or how CLLI codes, point codes or diagrams are involved. We do know that AT&T consistently uses the "ordering" process as a means to amend contract	a. No. Appropriate industry standard order forms and codes need to be provided to AT&T in order to process UTEX's orders for interconnection. All carriers must follow these guidelines. b. See AT&T's response to UTEX-2.	*(a) The Arbitrators find AT&T Texas's argument to be reasonable and adopt its proposed language.*

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	CLLI codes, Point Codes and/or diagrams? UTEX: b. Can AT&T deny interconnection of new technology traffic?		terms, deny and delay entry and increase costs. AT&T asserts total control over the process and unilaterally decides what is required. It then requires many impossible or irrational things as a prerequisite to bringing up interconnection.		*(b) The Arbitrators concur with AT&T Texas that New Technology traffic is not a defined term in this agreement. Furthermore, the Arbitrators find no reference to this issue in the referenced language. Therefore the Arbitrators adopt no language for this issue.*
AT&T NIM 2 - 9	(a) Are channelized DS3, OC3, or OC12 valid methods of Interconnection? (b) May UTEX lease facilities outside AT&T's network at UNE rates?	NIM-2: Section 4.0	(a) UTEX is not referring to these interfaces as a "method" of interconnection. AT&T is simply trying to create countless and pointless "issues" to distract from the real issues. (b) is a repeat of NIM 1-5. See UTEX's Position Statement to NIM 1-5	(a) No. Channelized DS3, OC3, and/or OC12 are not methods of interconnection. These are interfaces used to interconnect.. UTEX confuses physical interfaces with the interconnection that utilizes these interfaces. (b) No. UNE rates are inappropriate for leased facilities used for interconnection.	*(a) The Arbitrators find that, while they do not constitute entire methods of interconnection, DS3, OC3 and OC12 are used as underlying transmission technologies for interconnection. The Arbitrators find that AT&T Texas has not met its burden to prove that these are not technically feasible methods of interconnection.* *(b) For reasons stated under DPL issue AT&T NIM 1-5, the Arbitrators decline to adopt UTEX's proposed language "or from AT&T Texas" in §4.0.* *The Arbitrators adopt UTEX's proposed language with modification:* *"4.0 Physical Interconnection – UTEX will interconnect with <u>AT&T TEXAS</u> via any technically feasible method and location as described in Appendix 1 to NIM. <u>This is to include interconnecting via channelized DS3, OC3, or OC12.</u> UTEX may lease facilities from a third party provider (including CLECs or IXCs) ~~or from AT&T TEXAS~~ and interconnect with*

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					AT&T TEXAS over those facilities. In cases where interconnection is to take place at a third party APOT or CFA within an AT&T TEXAS location, UTEX must ~~need to~~ have on file the appropriate LOA to order interconnection facilities to that termination. As well, UTEX may interconnect over facilities (including network equipment, collocation space, and transport) that it purchases from another carrier."
AT&T NIM 2 - 10	Should UTEX be required to route traffic to the appropriate serving AT&T-Tandem or End office based on the jurisdictional nature of the traffic and LERG designations?	NIM-2: Section 5.0	UTEX believes AT&T's issues are intentionally vague and nowhere does AT&T specifically state what appropriate routing is. UTEX has requested numerous times for AT&T to engage UTEX in the creation and inclusion of detailed call flow diagrams for rating, routing, signaling and trunking and we would welcome AT&T input, if for no other reason to clarify exactly where the parties may agree and disagree on appropriate routing. To date (for over 5 years now) AT&T has refused to discuss any of this. UTEX welcomes a review of our call flow diagrams by AT&T and hopes to finally resolve some of these issues. AT&T's contract references are outdated, and UTEX cannot determine which of UTEX's interconnection terms, if any, AT&T is attempting to dispute. UTEX suggests that an on-the record workshop or slot for the arbitration hearing addressing "routing" for new technology traffic be scheduled.	Yes. Routing to the appropriate tandem is efficient. It is inefficient to reroute traffic from one tandem to another and could lead to tandem exhaust. Also, AT&T has no billing systems for double tandem terminations.	*UTEX's call flow diagrams are addressed under DPL issue UTEX 31. The Arbitrators concur with AT&T Texas regarding efficiency of routing and concerns for tandem exhaust, and reject UTEX's proposed language.*
AT&T NIM 2 – 11	AT&T: a). Should UTEX be required to issue	NIM-2: Sections 7.0. 7.1,	(a)-(c) UTEX does not oppose allowing AT&T to request additional trunk groups and additional capacity as long as AT&T agrees to pay for all	a. Yes. CLECs are required to fill out and submit the Industry accepted ASRs to AT&T for Interconnection.	*(a)-(c) The Arbitrators conclude that ILECs are entitled to compensation for the work that they do at the request of CLECs. The practice of*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
UTEX Counter Issue	ASRs for all trunk groups and facilities? AT&T: b) Should UTEX be required to pay all charges associated with ordering trunks and facilities related to establishing and maintaining an efficient Network for Interconnecting with AT&T? UTEX: (c) Can AT&T lawfully charge for "interconnection" work on its side of the POI? UTEX: (d) Can the PUC award language that is or could be implemented to obtain results that would violate §§ 157, 202, 202, 203, 230, 251 and/or 252 or the	7.1.1 7.1.2, 7.1.1.1, 7.1.2.2, 7.1.2.3, 7.1.2.4 7.2	elements on its side of the Interconnection POI and AT&T engages in Direct Signaling with UTEX and AT&T does not create ordering charges. Interconnection is not a service; it is a mutual duty, so one party should not be able to charge the other party for submitting orders. If, however, AT&T can impose charges to recover the cost of processing orders, then UTEX should be able to impose charges for PREPARING orders using AT&T's prescribed forms. Otherwise AT&T can raise costs on UTEX. Finally we will require that no changes in adding trunk groups results in AT&T blocking calls to UTEX or UTEX's customers. However, UTEX does not believe the language referenced by AT&T implements the AT&T stated intent and thus we oppose their language. (d) AT&T's proposed language is quite unclear and it has completely failed and refused to explain its intended results from an operational and financial perspective when it comes to the primary traffic types that will be handled as between the parties. UTEX cannot fully determine just what it is that AT&T has in mind, and AT&T is not talking. To the extent, however, AT&T is proposing to require UTEX or any of its non-carrier customers to be involuntarily subjected to any kind of Exchange Access charge regime when neither UTEX nor its non-carrier customers provide Telephone Toll service, then those proposals violate §§ 157, 201, 202, 203, 230, 251 and/or 252 and the FCC's rules and decisions relating to non-carrier customer traffic and intercarrier compensation.	UTEX disregards the industry guidelines established for all CLECs and attempts to create processes that may not be technically feasible. (See also answer to NIM-7a above). Also, it is not appropriate to include implementation in this Interconnection appendix. AT&T Texas offers the CLEC Handbook on the AT&T TEXAS CLEC Website. b. Yes. Manual and/or electronic charges are applied to each Interconnection related order (ASR). There are also non-recurring and recurring charges associated with the products ordered via ASRs. (See also answer to NIM-7b above). c) AT&T is unclear on what UTEX means by interconnection work. Each party is responsible for the interconnection facilities and trunks on its respective side of the POI. However, UTEX is required to fill out and submit the industry accepted ASR for Interconnection. Administrative charges may be applicable for such ASRs. (See also answer to NIM-7b above). d) See Response to Issue NIM-3(d) above.	*having the ILEC charge the CLEC for orders is a standard practice and is reasonable. Furthermore, the FCC stated in its First Report and Order, CC Docket No. 96-98, ¶ 200 that, to the extent that ILECs incur costs to provide interconnection under § 251(c)(2), they are entitled to compensation for such costs from the requesting carrier.* *AT&T Texas's proposed language stipulates that each party will be responsible for the costs of facilities on its side of the POI. The Arbitrators find AT&T Texas's proposed language to be reasonable and adopt it.* *(d) The Arbitrators find that this issue does not ask for resolution of specific disputed ICA language. The Arbitrators conclude that the language adopted for this ICA is consistent with the relevant sections of the Federal Telecommunications Act and the FCC rules and decisions relating to intercarrier compensation.*

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	FCC's rules and decisions relating to non-carrier customer traffic and intercarrier compensation?				
AT&T NIM 2 - 12	Is UTEX required to provide to AT&T the appropriate location identifiers for ordering trunks and facilities for Interconnection?	NIM-2: Section 7.3	UTEX has requested numerous times for AT&T to engage UTEX in the creation and inclusion of detailed call flow diagrams for rating, routing, signaling and trunking and we would welcome example orders and obligations. To date (for over 7 years now) AT&T has refused to discuss any of this. UTEX welcomes a review of our call flow diagrams by AT&T and hopes to finally resolve some of these issues.	Yes, CLLI codes and Point codes are required when interconnecting with an SS7 signaling interface and requesting trunks and facilities from AT&T for Interconnection.	*This issue is addressed in the text of the Award in the section titled "OSS and Ordering."*
AT&T NIM 2 – 13	a. Should UTEX be allowed to have its own unique ordering and provisioning processes for requesting Interconnection trunks and facilities? b. Should UTEX be required to use AT&T's ordering forms and follow its guidelines described via the CLEC Online Website in order to request	NIM-2: Sections 8.0 9.2 9.3- 9.3.3 See new contract references in NIM 7, NIM 8 and NIM 2-6 (a) and (b)	This is the third time AT&T has asked the same question. See UTEX Position Statement of NIM 7, NIM 8 and NIM 2-6 (a) and (b).	(a) No. CLECs are required to fill out and submit the Industry accepted ASRs to AT&T for Interconnection. UTEX disregards the industry guidelines established for all CLECs and attempts to create processes that may not be technically feasible. Also, it is not appropriate to include implementation in this Interconnection appendix. See CLEC Handbook on the CLEC Website. (b) Yes. CLECs are required to request products and services currently existing and defined with their ICA and follow the ordering guidelines as set forth in the CLEC Handbook or AT&T PRIMEACCESS.	*This issue is addressed in the text of the Award in the section titled "OSS and Ordering."*

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	products from AT&T?				
AT&T NIM 2 - 14	AT&T: a) May UTEX combine originating 251(b)(5) Traffic, intraLATA toll traffic, and interLATA toll traffic on the same trunk groups? AT&T: b) Should UTEX be financially responsible for interconnection facilities on its side of POI? UTEX: c) Should AT&T be financially responsible for interconnection facilities on its side of POI? UTEX: d) Can the PUC award language that is or could be implemented to obtain results that	NIM-2: Sections 9.0-9.1 .	(a) This is a repeat of NIM 6. See UTEX's Position Statement for NIM 6. (b) This is a repeat of NIM 4. See UTEX's Position Statement for NIM 4.	a. No. To ensure that UTEX and AT&T Texas are properly compensated for § 251(b)(5) traffic, intraLATA toll traffic, and interLATA toll traffic, these different traffic types must be separated into different trunk groups. b. Yes. The FTA does not require ILECs to provide or be financially responsible for interconnection facilities on the CLEC's side of the POI . c. Yes. Each party should be financial responsible for the interconnection facilities and trunks on their respective side of the point of interconnection for section 251 (b) (5) IntraLATA toll traffic. However, that does not extend to order processing charges associated with the ordering of service. If UTEX wishes to order additional services, it should bear the cost of its order. There are costs associated with the processing of both LSRs and ASRs and AT&T has the right to recover those costs from the cost causer. It is no different than if AT&T were to submit an LSR or an ASR to a CLEC. In that case the CLEC charges AT&T for processing AT&T's request because AT&T is the cost causer. Such ordering charges are simply a cost of doing business. d. See Response to Issue NIM-3(d) above.	*(a) The Arbitrators concur with AT&T Texas that, to ensure proper intercarrier compensation, these types of traffic should not be carried on the same trunk group. The Arbitrators, therefore, reject UTEX's proposed language and adopt AT&T Texas's proposed language.* *(b)-(c) This issue and associated ICA language are addressed under DPL issue AT&T NIM 4(a)-(b).* *(d) The Arbitrators find that this issue does not ask for resolution of specific disputed ICA language. The Arbitrators conclude that the language adopted for this ICA is consistent with the relevant sections of the Federal Telecommunications Act and the FCC rules and decisions relating to intercarrier compensation.*

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	would violate §§ 157, 202, 202, 203, 230, 251 and/or 252 or the FCC's rules and decisions relating to non-carrier customer traffic and intercarrier compensation?				
AT&T NIM 2 - 15	AT&T: a) Is AT&T required to provide Interconnection facilities and/or UNEs to UTEX so that UTEX can directly Interconnect with a third party carrier? UTEX: b) Can AT&T Block traffic to transit customers of UTEX?	NIM-2: Sections 10.0-10.2	The parties are entitled to reciprocal terms for their respective transit services to other carriers. Further, neither party may use affiliate relationships to create a regulatory advantage. AT&T cannot be contractually awarded the right to break the law. The law does not allow AT&T to refuse to route traffic to indirectly interconnected carriers that have chosen to have calls routed through UTEX's network. If AT&T wants an interconnection agreement with any of those carriers it can invoke whatever rights it may have as against them to request and or compel negotiations. But it cannot block. That is a violation of §§ 201, 201 and 251. AT&T's answer purposefully sidesteps UTEX's issues. When UTEX is a transit provider UTEX's customer is also a carrier. AT&T is actively engaged in anti-competitive blocking to potential Transit customers of UTEX. Nowhere in the Act is UTEX prohibited from providing its own transit services, yet AT&T is attempting to achieve this unlawful and anti-competitive result by trying to avoid this issue	a) No. The FTA does not require ILECs to provide interconnection facilities at UNE rates, nor does it require ILECs to provide facilities between the CLEC's wire centers and other third party networks. The obligation to interconnect under § 251(c)(2) is separate from the obligation to provide UNEs under § 251(c)(3). b) The contract language proposed by AT&T does not contemplate blocking traffic destined to a UTEX End User.	*(a) The Arbitrators find that the FTA does not require ILECs to provide facilities to connect CLECs to other carriers at TELRIC rates. The Arbitrators decline to adopt UTEX's proposed language.* *(b) Transit obligations of both parties are addressed in the text of the Award in the section titled "Transit Services." The Arbitrators find that UTEX has proposed no language directly related to this issue. Therefore, the Arbitrators take no action on language with respect to this issue.*
AT&T	Is UTEX required	NIM-2: Sections:	Related to POTS obligations, UTEX does not	YES. UTEX has an obligation to provide 911	*The Arbitrators concur with UTEX,*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
NIM 2 – 16	to have E911 PSAP approval prior to turning up E911 facilities?	11.0-11.1	oppose including unique obligations related to POTS, however for all new technology traffic AT&T can not be allowed to delay or block exchange of new technology traffic as no 911 obligations exist on UTEX for such traffic. The PUC already addressed this issue in prior litigation between the parties. PUC appropriately held that AT&T is not the enforcer of state or federal 911 rules. AT&T is attempting to re-litigate the issue without showing there has been a change of law, changed circumstances or considerations that were not presented to the Commission in that prior case. In any event, most of UTEX's customers do not have a 911 obligation or need, or have an independent 911 obligation they fulfill in other ways.	functionality before it offers local service. Also, FCC regulations require all carriers to transmit all 911 calls to a Public Safety Answer Point.	*consistent with decision in Docket No. 29944:* *"The Arbitrators agree with UTEX that a CLEC's obligation to provide 911 functionality is required, only to the extent it is providing a service for which 911 connectivity is required."* *(Complaint and Request for Expedited Ruling of UTEX Communications Corporation Regarding Post Interconnection Agreement Dispute with SBC Texas, Docket No. 29944, Arbitration Award at 32 (March 24, 2005)).* *The Arbitrators adopt UTEX's proposed language in §§ 11.0-11.1.*
AT&T NIM 2 - 17	Should billing, reconciliation and compensation terms and conditions be included in this Attachment 2 to NIM?	NIM-2 UTEX Appendix 2 to NIM SS7 SPOI §§ 11-13, Appendix 6 to NIM Compensation 12.0 – 13.0 Table Examples	UTEX does not currently understand the intent of this issue. But we believe the answer is probably yes.	No. The PUC addressed this issue in Docket 28821. Terms and Conditions relating to compensation are more appropriately addressed in the Compensation appendix .	*The Arbitrators conclude that the terms and conditions relating to billing reconciliation and compensation are more appropriately addressed in the General Terms and Conditions and the Intercarrier Compensation Attachment 6 to NIM, respectively. The Arbitrators therefore decline to adopt §§ 12 and 13 of Attachment 2 to NIM. The ICA language for § 11 is addressed under DPL issue AT&T NIM 2-16.*
AT&T NIM 3 - 1	Is it appropriate for UTEX to utilize ISDN, an AT&T retail switching "service," to interconnect its network to AT&T under §251(c)(2).	[NIM 3] Entire Attachment	The Commission specifically rejected AT&T's argument that ISDN is a retail service and an inappropriate method to interconnect in the Waller Creek arbitration. The Fifth Circuit affirmed that conclusion. AT&T has a heavy burden to prove that this was incorrect, if they are legally allowed to even try, which UTEX denies. Dockets 29944 and 33323 (the latter still not	No. IDSN is not a form of Interconnection and AT&T should not be required to utilize an AT&T retail switching service to be used for interconnection purposes. If this Commission determines that ISDN Interconnection should be allowed, UTEX should be required to adhere to all restrictions and requirements outlined in Dockets 29944 and 33323.	*This issue and associated ICA language are addressed in the text of the Award in the section titled "Technically Feasible Forms of Interconnection."*

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			administratively final) interpreted the current terms. UTEX made changes to address the problemnatic terms that were applied and interpreted in Docket 29944.		
AT&T NIM 3 - 2	Is UTEX required to provide Local Number Portability?	[NIM 3] 1.1.2.1 Appendix A, Sections 4 and 7	UTEX asserts that its terms will facilitate and allow porting if a user wants to port in or port out. If AT&T is contending that porting is not technically feasible, then ¶ 74 of the quoted order contains an express exception.	Yes. See FCC 96-286 First Order Para 74. requires that all local exchange carriers, provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the FCC, (and also, by the PUC).	*This issue and associated ICA language are addressed under DPL issue AT&T LNP-1.*
AT&T NIM 3 - 3	Is UTEX required to obtain and administer its own NPA/NXXs, including number pooling?	[NIM 3] 1.1.2.1 Appendix A, Sections 4 7	AT&T's assertion is factually incorrect. The FCC's rules expressly contemplate "line side" interconnection and "trunk side" interconnection. ISDN would be either "line side" or "trunk side with line side treatment" and therefore contemplatgd 51.305(a)(2)(i) or (ii). AT&T presently offers a form of interconnection to CMRS carriers called "Type 1" interconnection that involves use of an AT&T-supplied number. The FCC has repeatedly described this interconnection form as resembling a PBX connection. This shows, again, that interconnection may technically resemble something AT&T offers as a retail service. UTEX is not seeking a switching UNE. This is interconnection.	Yes. UTEX is required to obtain and administer its own NPA/NXXs. The only instance where AT&T was required to obtain and administer a CLEC's NPA-NXXs was for CLEC ULS/UNE-P customers. This is another example illustrating that UTEX is not seeking interconnection with ISDN but, instead, a retail end user service. Interconnection is not a ULS/UNE-P service and, thus, requirements for ULS/UNE-P do not apply. Also, the TRRO has eliminated the requirement that ILECs unbundle mass market switching	*Consistent with the Commission decision in Docket No. 33323, the Arbitrators find that UTEX is required to administer its own NPA/NXXs, including number pooling:* *[T]he Arbitrators find that in order for UTEX to utilize this method of interconnection, UTEX must assume the responsibility to modify its network elements to perform as a Class 5 switch, including but not limited to signaling, billing, and error treatment. UTEX shall also assume the responsibility to modify its network elements to conform to meet current federal and state requirements and industry standards, including but not limited to, Local Number Portability (LNP) protocol inter-working, number pooling and customer assignable NPA/NXXs consistent with the*

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					requirements of Appendix to Attachment 25. *(Petition of UTEX Communications Corporation for Post-Interconnection Dispute Resolution with AT&T Texas and Petition of AT&T Texas for Post-Interconnection Dispute Resolution with UTEX Communications Corporation, Docket No. 33323, Arbitration Award at 14 (June 1, 2009); Docket No. 29944, Arbitration Award at 39-40 (March 24, 2005)). Therefore the Arbitrators decline to adopt UTEX's proposed language.*
AT&T NIM 3 - 4	Should AT&T Texas be required to route Operator Services/Directory Assistance traffic for UTEX?	[NIM 3] 1.1.2.3 Appendix A-Operator Services	The Commission disagreed with AT&T's claims here and ordered this function in Waller Creek.	No. Interconnection is the "physical linking" of two networks. § 251(c)(2) requires AT&T only to provide interconnection with its network for a CLEC's facilities and equipment. It does not require AT&T to route Operator Services/Directory Assistance traffic for UTEX.	*The Arbitrators find that there is no requirement under FTA § 251(c)(2) to route Operator Services/Directory Assistance traffic, and therefore decline to adopt UTEX's proposed language.*
AT&T NIM 3 -5	a. Is UTEX required to provide E911 connectivity directly from its end office switch to each E911 selective router? b. Is UTEX required to have E911 PSAP approval prior to turning up E911	[NIM 3] Section 1.1.2.2 AppendixA-911 calls Appendix C Section 7.0	This is not a UNE. And the Commission disagreed with AT&T on this issue in Waller Creek. AT&T's issue b is different than the question whether AT&T can refuse to turn up interconnection unless there is 911 approval. UTEX will have 911 authority in all areas where it has any customers that may need 911. But UTEX will have many customers that don't need 911 or do it another way.	a. Yes. UTEX will not have any end users assigned to AT&T ULS. Therefore, AT&T cannot technically route E911 calls on behalf of UTEX. UTEX must provide E911 connectivity from its end office switch to each E911 selective router in order to complete UTEX UNE ISDN PRI end user E911 calls. b. Yes. State Commission and FCC rulings have made clear that carriers must provide end user E911 calling capability *before* their networks are turned up for live traffic.	*(a) The Arbitrators find that AT&T Texas's argument is reasonable and decline to adopt UTEX's proposed language.* *(b) The Arbitrators find that UTEX's proposed language was not approved in Docket No. 28821, nor has UTEX's testimony shown a compelling reason for inclusion of this language, and the Arbitrators therefore*

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	facilities?				*decline to adopt it.*
AT&T NIM 3 - 6	Should this Attachment 3 to NIM contain terms and conditions for Compensation?	[NIM 3] 1.12 1.2 1.4 1.5 1.6 Appendix B Appendix C Sections 8.0 9.0	The Commission held in the Waller Creek case that ISDN required somewhat unique compensation terms, and that they should be in the ISDN appendix. ISDN interconnection was not in issue in Docket 28821.	No. The Commission has already addressed this issue in Docket 28821. Terms and Conditions relating to compensation should be addressed in the Compensation appendix.	*The Arbitrators find that the Commission decided in Docket 33323 that UTEX is "obligated to modify its network elements to perform as a Class 5 switch, including but not limited to signaling, billing and error treatment to interconnect with AT&T Texas. (Docket No. 33323, Arbitration Award at 17 (June 1, 2009) (emphasis added)). Furthermore, the Arbitrators find that compensation is not technology-specific. The Arbitrators find that UTEX has not made a convincing argument for special language for ISDN interconnection compensation and billing, and therefore decline to adopt UTEX's proposed language.*
AT&T NIM 3 - 7	Should AT&T be required to utilize its End Offices as Access Tandems?	[NIM 3] Appendix A-Inter-LATA toll, Intra-LATA toll	The Commission disagreed with this precise argument by AT&T in Waqller Creek.	No. AT&T End Office Switches are not interconnected to all IXCs;. its Access Tandem Switches *are*. UTEX should be required to (1) establish Meet Point Trunk Groups to the Access Tandem Switch where it has homed its NPA/NXXs per established LERG routing and (2) bear the costs associated with facilities that carry Meet Point Trunk Groups.	*The Arbitrators find that UTEX has offered no argument beyond a claim, without specific citation, to one of several Waller Creek dockets. The Arbitrators find AT&T Texas's argument to be reasonable and therefore decline to adopt UTEX's language.*
AT&T NIM 3 - 8	a. Should UTEX be allowed to have its own unique ordering and provisioning processes for requesting Interconnection? b. Should UTEX be required to	[NIM 3] Appendix C Sections 1.0 3.0 4.0 5.0 6.0	If this is directed at ISDN, AT&T has no forms for this and has refused UTEX's multiple requests that some be created. They want to use the lack of a form to deny interconnection and functionally overrule any Award holding ISDN should be approved	(a) No. For purposes of Interconnection, CLEC's are required to fill out and submit the Industry accepted ASRs to AT&T. UTEX disregards the industry guidelines established for all CLECs and attempts to processes that may not be technically feasible. Also, it is not appropriate to include implementation in this Interconnection appendix. Implementation is addressed in the CLEC Handbook on the AT&T TEXAS	*This issue is addressed in the text of the Award in the section titled "OSS and Ordering."*

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	use AT&T's ordering forms and follow its guidelines in the CLEC Online Website in order to request products from AT&T?			CLEC Website. (b) Yes. CLECs are required to request products and services currently existing and defined with their ICA and follow the ordering guidelines as set forth in the CLEC Handbook or AT&T PRIMEACCESS.	
AT&T NIM 3 - 9	Should a non-251/252 offering such as Transit Service be negotiated separately?	[NIM 3] Appendix C Section 6.0	UTEX has addressed transit in multiple places above. Transit does fall within §§ 251 and 252 duties and is appropriately part of an interconnection agreement. When an ILEC performs the function any price for it must be cost-based in accordance with § 252(d).	Yes. §251 (b)(5) sets forth "the duty to establish reciprocal compensation for the transport and termination of telecommunications" between originating and terminating carriers. Transit traffic is traffic that is transited via a third party carrier on whose network the telecommunications traffic neither originates or terminates. Defining transit traffic as 251(b)(5) traffic would shift reciprocal compensation obligations of the originating carrier onto the transiting carrier. CLECs should not be allowed to shift such an obligation onto AT&T when it provides Transit Service.	*The Arbitrators find that AT&T Texas has no obligation under FTA §§ 251-252 to provide facilities for transit traffic at TELRIC rates. Furthermore, rates for transit service provided by either party are addressed in the text of the Award in the section titled "Transit Services." Therefore, the Arbitrators decline to adopt UTEX's proposed § 6.1.* *With regard to UTEX's proposed language, requiring AT&T Texas to provide interconnection facilities to a third-party carrier, the Arbitrators find that FTA § 251(c)(2) does not impose any obligation upon an ILEC to provide such facilities at TELRIC rates. Therefore the Arbitrators decline to adopt UTEX's proposed § 6.2.*
AT&T NIM 4 - 1	Does § 251(c)(2) require AT&T's non-ILEC affiliates to interconnect with UTEX via what UTEX calls "ATM Interconnection"		. UTEX is not seeking to directly interconnect with any AT&T Texas affiliate. AT&T Texas uses ATM in its own network to support its various services. If there is "ATM" within AT&T Texas network then AT&T is functionally providing ATM "to itself," ATM is therefore a mandatory method and form of interconnection under FCC rules and the Act, It fits within the FCC's definition of "technically	No. Asynchronous Transfer Mode ("ATM") is a product, not an interconnection method. This is another example of UTEX improperly characterizing an AT&T product or service as "interconnection." In addition, ATM is only offered via AT&T's non-ILEC affiliate(s). § 251(c)(2) does not obligate non-ILEC affiliate(s) to provide	*This issue is addressed in the text of the Award in the section titled "Technically Feasible Forms of Interconnection."*

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	?		feasible" in Rule 51.5 and the requirements of 51.305, and specifically 51.305(a)(3) and (a)(4), for example,	services in this Agreement.	
AT&T NIM 5 - 1	Does § 251(c)(2) require AT&T's non-ILEC affiliates to interconnect with UTEX under this Agreement via SIP interconnection?	Appendix 5 to NIM: SIP Interconnection Method	As explained above, if AT&T has SIP in its own ILEC network and uses it to serve customers or for its own internal needs then SIP interconnection is technically feasible and required under the Act and FCC rules. See Position Statement on NIM 2, NIM 3, NIM 1-2. If AT&T has no SIP and never has any SIP during the term of this contract then the section will never come in to play.	No. AT&T Texas does not currently offer IP-based products that utilize Session Initiated Protocol ("SIP"). Such products are offered via AT&T Texas' non-ILEC affiliate(s). § 251(c)(2)'s ILEC obligations to provide interconnection within an ILEC's network to CLECs does not extend to non ILEC affiliate(s).	*This issue is addressed in the text of the Award in the section titled "Technically Feasible Forms of Interconnection."*
AT&T NIM 6 – 1 UTEX Responsive Issues:	AT&T: a) Should traffic subject to reciprocal compensation under Section 251(b)(5) be called "Section 251(b)(5)" traffic or "local" traffic? AT&T: b) What is the proper definition and scope of Section 251(b)(5) Traffic and ISP-Bound Traffic in accordance with the FCC's ISP Terminating Compensation Plan? AT&T: c) Should	Appendix 6 to NIM: Intercarrier Compensation (NIM-6): Sections: *1.0,* 1.1, 1.2, *1.4.4*	See UTEX Issues 1-46. UTEX believes that AT&T's proposals related to compensation are inherently and purposefully confusing, vague, anti-competitive and violate the basic competitive intent of the Act. AT&T starts out by incorrectly asserting that both parties are not proposing to refer to "§ 251(b)(5) traffic." But UTEX has no opposition to doing so. AT&T opposed UTEX's attempt to propose language using that terminology, and now AT&T claims the language it and the Arbitrators required UTEX to advocate is "outdated.." This kind of "gotcha" gamesmanship is hightly inappropriate. The parties do have different definitions of "251(b)(5)." AT&T is not explicit in all of its proposed language or even in its issue statements about their "Intent." Or the actual result they desire. Thus UTEX has to rely on how AT&T has historically "implemented" similar language. The construct of how AT&T currently identifies its obligations under the Act and how AT&T implements such self defined obligations are anti-competitive. AT&T does not include its	(a) In the *ISP Remand Order*, the FCC focused on 251(b)(5), as limited by 251(g), instead of "local" to determine the traffic subject to reciprocal compensation. Therefore, the ~~Commission finds~~ it *is* appropriate to use the term "251(b)(5)" instead of the term "local" to describe the type of traffic subject to reciprocal compensation under Section 251(b)(5) of the Act. *AT&T Texas characterizes the term "local traffic" as proposed by UTEX to be ambiguous. AT&T Texas states that recent rulings by this Commission and the FCC have characterized traffic as either being included within the scope of Section 251(b)(5) traffic or as being beyond the scope of 251(b)(5)traffic, and offers Optional EAS traffic as an example of traffic that AT&T Texas maintains the Commission determined not to be subject to Section 251(b)(5). AT&T Texas Ex. 15. Direct Testimony of J. Scott McPhee ("McPhee Direct"), at 52:13-20.* (b) Given the Act's definitions and the FCC's	*The Arbitrators address the language proposed in §§ 1.0, 1.1, 1.2, and 1.4.4 of Attachment 6 to NIM: Intercarrier Compensation under this DPL issue.* *(a) The Arbitrators conclude that the ICA should refer to "Local Traffic" instead of "Section 251(b)(5) Traffic." In the ISP Remand Order and the Core Mandamus Order, the FCC concluded that FTA § 251(b)(5) is not limited to local traffic. (In the Matter of Intercarrier Compensation for ISP-Bound Traffic, CC 99-68, Order on Remand and Report and Order ¶34, 16 FCC Rcd. 9151 (rel. Apr. 27, 2001); In the Matter of Intercarrier Compensation for ISP-Bound Traffic, CC Docket 99-68, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking ¶ 8, 24 FCC Rcd. 6475 (rel. Nov. 5, 2008)). In light of the FCC's conclusion regarding the scope of FTA § 251(b)(5), the ICA contains compensation provisions for several types of traffic subject to that provision (e.g., Optional EAS Traffic).*

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	the provisions of the Intercarrier Compensation attachment apply to local Resale services? UTEX: d) Can 251(b)(5) and 251(g) be read and implemented to counter the ACT's intent in Section 157, 201, 202, 203 and 230? UTEX: e) what is intercarrier compensation under the Act? UTEX: f) Is Transit a reciprocal obligation under the ACT? UTEX: g) What are all of the traffic types that will be exchanged between LECs and how should they be signaled, routed, rated and		actual intent in its language but defers their intent to other documents, forums, self declared industry standards, other proceedings and their own historical operations. The intended result is to deny new technology certainty in this resulting interconnection agreement and thus denying or deferring resolution of issues. Without such certainty for interconnection for the mutual exchange of all traffic, the ability to "compete" with AT&T's existing business models and business practices does not exist for UTEX nor for any of our new technology customers In essence, AT&T is requesting that UTEX's rights under the Act be limited so that UTEX may only engage in competition and support business models that AT&T deems appropriate, and then only if AT&T also gets paid at access rates. UTEX believes such a result is unlawful, unreasonable and cannot be allowed. However, if this Commission agrees with AT&T that UTEX has only limited rights with respect to Interconnection and the ability to act as a peer and competitor (rather than consistently being relegated to "customer" status), the PUC must at least clearly and expressly set out its reasoning and explain how this result is allowed under the Act and current rules. Regulators have a natural inclination to "protect" existing service providers and existing business models. Where such protection is potentially warranted under the Act (such as the 251(g) carve out) UTEX is requesting explicit terms and call flow diagrams for signaling, routing, trunking and rating as well as explicit obligations to be defined in this agreement.	interpretation of 251(b)(5), reciprocal compensation applies to traffic that is not toll and not information access (essentially, reciprocal compensation applies to "local" non-ISP traffic). *AT&T Texas proposes to use the terms "Section 251(b)(5) traffic" and "ISP-Bound traffic" to describe the type of traffic subject to reciprocal compensation under Section 251(b)(5) of the Act and the type of traffic compensated under the FCC's ISP interim compensation plan. AT&T Texas states that Section 251(b)(5) traffic originates from an end user of one LEC and terminates within the same ILEC mandatory local calling scope to an end user of another LEC. AT&T Texas proposes to define "ISP-Bound Traffic" as traffic that originates from an end user and terminates to an ISP physically located within the same ILEC mandatory local calling scope. According to AT&T Texas, this is consistent with the definition of ISP-Bound Traffic in the ISP Remand Order because the ISP Remand Order targeted only that ISP-Bound traffic that would otherwise be subject to reciprocal compensation. AT&T Texas Ex. 15, McPhee Direct, at 51:16-52:10; 54: 4-16.* (c) No. Resale service is a telecommunications service offered to CLECs at a wholesale discount whereby the CLEC does not invest in switches, fiber optic transmission facilities, or collocation arrangements. *AT&T Texas states that resale services are retail telecommunications services that an ILEC sells at a wholesale*	*Referring to only one of those types of traffic as "Section 251(b)(5) Traffic" could, therefore, be misleading.* *The Arbitrators note that the FCC previously determined that state commissions have the authority to determine which geographic areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under FTA § 251(b)(5). (In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket 96-98, First Report and Order ¶ 1035, 11 FCC Record 15499 (rel. Aug. 8, 1996)). In Docket No. 28821 under Intercarrier Compensation DPL SBC-2 , the Commission reaffirmed its previous determination that reciprocal compensation arrangements apply to calls that originate from and terminate to an end-user within a mandatory single or multi-exchange local calling area, including the mandatory EAS/ELCS areas comprised of SBC exchanges and the mandatory EAS/ELCS areas comprised of SBC exchanges and exchanges of independent ILECs. (Docket No. 28821, Arbitration Award – Track 1 Issues , Intercarrier Compensation – JT DPL – Final, DPL Issue SBC-2 at page 1 of 84 (February 22, 2005)). The Arbitrators note that the calls classified by AT&T Texas as Section 251(b)(5) Traffic in § 1.2 mirror, in large part, the type of calls determined by the Commission in Docket No. 28821 to be subject to reciprocal compensation. Therefore, the Arbitrators*

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	billed? UTEX: h)Is there any kind of traffic that is technically feasible to exchange, but which AT&T has no obligation to exchange under the act? If so what are the terms for this type of traffic? UTEX: i) Can AT&T' refuse to include its actual "market" intent of its proposed language by refusing to participate in the mutual create of explicit call flow diagrams for all traffic to be passed under this agreement?		UTEX has absolutely no problem being a Joint Provider of exchange access as contemplated under 251(g) if that is what the law requires. In fact, in these situations, UTEX has no problem carrying out its obligations under MECAB and MECOD so long as UTEX can share in the 251(g) IXC charges, and does not get the bill from AT&T, just like MECAB and MECOD contemplate. But UTEX is not AT&T's access customer; it is a co-carrier, peer, joint provider. AT&T references MECOD and MECAB but then it will surely create disputes about how it will work in actual practice when it comes to New Technology traffic, and in fact is proposing to abandon those standards and practices for New Technology traffic. UTEX desires and deserves certainty now. We also will refuse in all respects any obligation to be deemed AT&T's customer under some twisted interpretation of § 251, including the subsection (g) carve-out. We wish to operate so that all traffic passed is either (1) reciprocal in nature; (2) Jointly provided to an IXC; or (3) Transit. Finally, if there are going to be any charges, UTEX has a right to clear notice about what activity or inactivity will lead to a charge, and what the charge will be. More important, AT&T is vague about what is or is not 251(b)(5) or carved out by 251(g) and hints, but does, not declare that there may be some other sort of LEC-LEC traffic. If there is some other type of traffic, then spell it out, justify the rationale and authority and prescribe a rate, because access cannot just be assumed or deemed to be just, reasonable, nondiscriminatory or appropriate . The rules and results must be	*discount to CLECs that resell the services at retail. A reseller does not own the facilities associated with that resale end user, and therefore is not incurring facilities-based expenses to complete a call. AT&T Texas asserts that intercarrier compensation applies to calls between a UTEX customer served using a resold service (and therefore AT&T Texas's facilities) and a UTEX customer served using UTEX facilities (including facilities obtained from AT&T Texas). AT&T Texas Ex.15, McPhee Direct, at 106:3-107:11.* d) AT&T believes that this issue is no longer relevant as a result of the rulings in Order 30. If it remains relevant, then AT&T offers the following: AT&T is unclear of UTEX's intent with this issue statement and as such is unable to formulate a response. e) AT&T believes that this issue is no longer relevant as a result of the rulings in Order 30. If it remains relevant, then AT&T offers the following: The issue statement is overly broad and does not address specific contract provisions. f) AT&T believes that this issue is no longer relevant as a result of the rulings in Order 30. If it remains relevant, then AT&T offers the following: AT&T is unclear of UTEX's intent with this issue statement and as such is unable to formulate a response. For Example: what Section of the Act and whose obligations UTEX is referring to.	*conclude that it would be appropriate to refer to these calls as "Local Traffic" as proposed by UTEX rather that "Section 251(b)(5) Traffic" in Attachment 6. Furthermore, the Arbitrators find that it is appropriate to include references to traffic other than local traffic such as ISP-Bound Traffic, Transit Traffic, ESP Traffic, Optional EAS Traffic, IntraLATA Interexchange Traffic, InterLATA Interexchange Traffic, FX Traffic, FGA Traffic, Cellular Traffic, and Meet Point Billing Traffic in § 1.1 because Attachment 6 addresses intercarrier compensation for those types of traffic.* *AT&T Texas also proposes language in § 1.1 that applies the provisions of this attachment to traffic originated by UTEX over local circuit switching purchased by UTEX from AT&T Texas on a wholesale basis (non-resale). The Arbitrators conclude that this language should be included in the ICA because these compensation provisions apply irrespective of whether UTEX uses its own facilities or purchases facilities on a wholesale basis.* *The Arbitrators decline to adopt UTEX's proposed language in §1.0 and §1.4.4, which state that no intercarrier compensation is due or payable for traffic that is delivered to or received from a non SS-7 Interconnection method such as ISDN, ATM, or SIP or for traffic delivered to a customer via a packet switch technology such as Ethernet, DSL, or Gig E, respectively The Arbitrators find that*

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			balanced, reciprocal and cost-based. Transit is a reciprocal obligation under the Act. It is part of interconnection and/or traffic exchange between LECs. AT&T must provide transit to other carriers that are indirectly interconnected with UTEX, at cost-based rates. When other carriers choose to indirectly interconnect with AT&T by advertising routing through UTEX's network, then AT&T must honor that routing unless and until it requests or requires negotiations with the other carrier and then obtains ICA terms providing that the other carrier can or will directly interconnect with AT&T. AT&T cannot block traffic. The rate for transit when third party unaffiliated carriers are involved must be cost-based, mutual and reciprocal. Since - unlike AT&T - UTEX cannot compel AT&T's affiliated wireless carrier to negotiate terms or to directly interconnect, then transit provided by AT&T to its affiliated carriers should be treated as if it is going to AT&T Texas and pay the reciprocal compensation rate rather than the transit rate. There must be a clear, explicit and express statement of all of the traffic types that will be exchanged between the two LECs and how they should be signaled, routed, rated and billed. Any non-reciprocal treatment will inherently discriminate against such traffic and is inherently anti-competitive. AT&T implies that there may be some kind of traffic that could be technically feasibly be exchanged but that AT&T does not have to exchange. There is not. If and when AT&T ever clearly states a position then UTEX must be given an opportunity to reply. Based upon	g) AT&T believes that this issue is no longer relevant as a result of the rulings in Order 30. If it remains relevant, then AT&T offers the following: This issue statement is overly broad. AT&T has responded to this issue in numerous issues throughout the DPL. h) AT&T believes that this issue is no longer relevant as a result of the rulings in Order 30. If it remains relevant, then AT&T offers the following: For purposes of interconnecting and exchanging traffic AT&T's proposed language addresses the appropriate types of traffic. AT&T does not propose contract language that would relieve AT&T from an obligation to exchange traffic pursuant to the Act. i) AT&T believes that this issue is no longer relevant as a result of the rulings in Order 30. If it remains relevant, then AT&T offers the following: While call flow diagrams may be interesting or helpful in some cases, written terms and conditions are legally necessary to establish any and all contract terms. Furthermore, UTEX's diagrams are unclear.	*the appropriate intercarrier compensation for the various types of traffic exchanged between UTEX and AT&T Texas is addressed in other sections of Attachment 6 and does not depend on the type of interconnection or technology used to exchange the traffic. For the same reason, the Arbitrators also conclude that the references to SS-7 interconnection in § 1.1 should be removed.* *(b) With respect to § 1.2, the Arbitrators note that that the ICA language describing the calls that would be classified as local traffic does not address calls that originate and terminate to end users within an AT&T Texas exchange and an independent ILEC exchange that share a common mandatory local calling area. Consistent with the Commission's decision in Docket No. 28821 under Intercarrier Compensation DPL Issue SBC-2, the Arbitrators conclude that such calls between end users located within an AT&T Texas exchange and an independent ILEC exchange that share a common mandatory local calling area should be classified as local traffic. Therefore, the Arbitrators modify the first sentence in § 1.2 as follows:* *"Calls originated by ~~UTEX~~ CLEC's end users and terminated to AT&T TEXAS' end users (or vice versa) will be classified as Local Traffic under this Agreement if: (i) the calls both originate~~s~~ and terminate~~s~~ to such end users in the same AT&T TEXAS exchange area; or (ii) the calls both originate~~s~~ and terminate~~s~~ to such end users*

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			UTEX's experience, UTEX believes that the only way compensation terms can be implemented fairly with respect to all new technology traffic is if they are physically tied to the routing and trunking obligations of the parties. Thus if a traffic type has a unique rate characteristic, it should also have a unique route and trunk as between the parties. UTEX then includes a misrouting section so the parties can resolve any situation where one party disagrees with the other related to appropriate routing. We are unsure if AT&T agrees or disagrees with this approach as they have yet to provide a negotiator since 2005 and has steadfastly refused to even talk about the subject.		*within different AT&T TEXAS Exchanges that share a common mandatory local calling area or within an AT&T Texas exchange and an independent ILEC exchange that share a common mandatory local calling area, as defined in AT&T Texas's tariff, e.g., mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS), or other like types of mandatory expanded local calling scopes."* *Further, the Arbitrators conclude that UTEX's proposed language in § 1.2 classifying traffic to or from enhanced service providers as local traffic should not be adopted for the reasons stated in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers."* *The Arbitrators decline to adopt UTEX's proposed language in § 1.2, which classifies FX traffic as local traffic if the CLEC has established a single point of interconnection (SPOI) within the LATA. Consistent with the Commission's decision in Docket No. 24015, the only type of FX traffic classified as local traffic and subject to reciprocal compensation for local traffic is the FX traffic that originates and terminates within the Commission-defined mandatory local calling area. (Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution regarding Intercarrier Compensation for "FX-TYPE" Traffic against Southwestern Bell Telephone*

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					Company, Docket No.. 24015, Revised Arbitration Award at 49 (August 28, 2002)). The Arbitrators do not see the need to separately classify such FX traffic from other "local" traffic. The issue of intercarrier compensation for FX traffic is addressed under AT&T NIM 6-3. The Arbitrators find that AT&T Texas's proposed language regarding compensation for ISP-Bound traffic is not the same as the language approved for the CJP ICA in Docket No. 28821, and therefore the Arbitrators adopt the following language from the CJP ICA for §1.2: *"For the purpose of reciprocal compensation, a call to an Internet Service Provider is classified as "Local Traffic" if it meets either requirement in (i) or (ii). Calls originated by AT&T Texas's end users and terminated to an ISP served by a CLEC (or vice versa) will be classified as compensable "ISP-Bound Traffic" in accordance with the FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April 27, 2001) (FCC ISP Compensation Order) if the call (i) originates from end users and terminates to an ISP in the same AT&T Texas exchange area; or (ii) originates from end users and terminates to an ISP within different AT&T Texas exchanges or within an AT&T Texas exchange and an*

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					independent ILEC exchange that share common mandatory local calling area, as defined in AT&T Texas's tariff, e.g., mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS), or other like types of mandatory expanded local calling scopes." *(c) The Arbitrators decline to adopt UTEX's proposed language in §1.1, which would apply the intercarrier compensation provisions of the attachment to traffic originated over services provided under local Resale services when the traffic originates from or terminates to a UTEX SS-7 Switch. UTEX has not provided any explanation supporting its proposed language. The Arbitrators find the language in §1.1 stating that the intercarrier compensation provisions do not apply to traffic originated over services provided under local Resale services to be reasonable. UTEX has not opposed this language and it is consistent with the language approved for the CJP ICA in Docket No. 28821.* *(d) The Arbitrators find this issue does not ask for resolution of specific disputed contract language. The Arbitrators conclude that the language adopted for this ICA is consistent with the relevant sections of the FTA and FCC rules and decisions relating to intercarrier compensation.* *(e) The Arbitrators find this issue statement does not address any specific contract language. The intercarrier compensation for*

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					various types of traffic that are in dispute is addressed in other DPL issues. *(f) The issue statement refers to transit obligations under the Act but does not mention any specific section of the Act. The transit obligations for both parties are addressed in the text of the Award in the section titled "Transit Services."* *(g) and (h) These issue statements do not address any specific disputed contract language. The intercarrier compensation provisions for various types of traffic exchanged between UTEX and AT&T Texas, to the extent they are disputed, are addressed in other DPL issues.* *(i) The issue of whether call flow diagrams should be incorporated into the ICA is addressed in DPL issues UTEX-31 and UTEX-33.*
AT&T NIM 6 - 2	(a) Is it appropriate for UTEX to utilize ISDN, an AT&T retail switching "service," to interconnect its network to AT&T under §251(c)(2). (b) Does § 251(c)(2) require AT&T's non-ILEC	UTEX Appendix 3 to NIM	See UTEX Issues 1-46 and UTEX Responsive issues and positions to NIM 6-1. It is also a repeat of AT&T NIM 3-1. (a) See UTEX position statement to NIM 3-1 and other ISDN related issues. (b) and (c) are repeats of NIM 2, NIM 3 and NIM 1-2. AT&T is purposefully clogging this DPL to confuse the real issues. (d) The PUC already answered (d) in the Waller Creek case, and the 5th Circuit affirmed. AT&T has not given any reason why it should be allowed to relitigate this issue.	(a) . No. See NIM-3 ISDN DPL. (b) No. See NIM 4-1 ATM DPL. (c) No. See NIM 5 SIP DPL (d) No. Ethernet, DSL and Gig E are not forms of Interconnection and UTEX should not be allowed to utilize these products for interconnection purposes.	*(a)-(d) This issue is addressed in the text of the Award in the section titled "Technically Feasible Forms of Interconnection."* *The Arbitrators have addressed ICA language for technically feasible methods of interconnection in other sections of the ICA; therefore, they decline to adopt UTEX's proposed Appendix 3 to NIM.*

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	affiliates to interconnect with UTEX via what UTEX calls "ATM Interconnection"? (c) Does § 251(c)(2) require AT&T's non-ILEC affiliates to interconnect with UTEX under this Agreement via SIP interconnection? (d) Are Ethernet, DSL and Gig E appropriate methods of interconnection?				
AT&T NIM 6 - 3	(a) What is the appropriate form of intercarrier compensation for FX and FX-like traffic including ISP FX Traffic? (b) How should FX and FX-like traffic be segregated and separately tracked	NIM-6: Sections: 1.4.2 – 1.4.3.2	See UTEX Issues 1-46 and UTEX Responsive issues and positions to NIM 6-1. (a) and (b) The FCC's decision in *Core Mandamus* brought all LEC-LEC traffic other than jointly provided access to support Telephone Toll within § 251(b)(5), although some is also covered by § 201. FX can no longer receive different treatment. Since AT&T has invoked the *ISP Remand* regime, all traffic that either LEC transports and terminates must have a $0.0007 rate.	(a) The Commission finds "bill and keep" to be the appropriate form of intercarrier compensation for FX Voice Traffic and ISP Bound Traffic. (b) In Docket No. 24015, the Commission found that FX traffic should be segregated and tracked using the Percentage of FX Usage (PFX) method. *AT&T Texas states that FX is the industry term for those calls that originate in one local exchange and terminate to an exchange that is not within the originating local calling scope.*	*(a)-(b) In light of the FCC's conclusion in the Core Mandamus Order that FTA § 251(b)(5) is not limited only to the transport and termination of certain types of traffic, such as local traffic (In the Matter of Intercarrier Compensation for ISP-Bound Traffic, CC Docket 99-68, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking ¶ 8 24 FCC Rcd. 6475 (rel. Nov. 5, 2008)), the Arbitrators conclude that FX traffic is encompassed by section 251(b)(5). However, the Arbitrators find that the FCC rules do not require the various types of*

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	for compensation purposes?			*AT&T Texas states that its FX service and a CLEC's FX-Type service allow an end user to have a "presence" in a local exchange where they are not actually physically located. AT&T Texas gave examples of FX end users such as plumbing contractors and ISPs who are interested in attracting customers from an area that is much larger than the exchange in which they are located. AT&T Ex. 15, McPhee Direct, at 58:4-59:10.*	*§251(b)(5) traffic to be subject to the same compensation rate, and therefore the compensation for FX traffic need not mirror the compensation for local traffic.* *The Arbitrators note that in Docket Nos. 24015 and 28821, the Commission found that bill and keep is the appropriate method for intercarrier compensation for ISP-Bound FX traffic and voice FX traffic. (Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution regarding Intercarrier Compensation for "FX-TYPE" Traffic against Southwestern Bell Telephone Company, Docket No.. 24015, Order on Clarification at 2, (January 4, 2005); Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement, Docket No. 28821, Arbitration Award – Track I Issues at 26, (February 22, 2005)). Consistent with the Commission's decisions in Docket Nos. 24015 and 28821, the Arbitrators conclude that ISP-Bound FX traffic and voice FX traffic will be subject to the "bill and keep" compensation method.* *The Arbitrators adopt the contract language pertaining to FX traffic contained in § 1.3.1 through § 1.3.3 and the language regarding segregating and tracking FX traffic in §9.0 including §9.1 through §9.3.1 of Attachment 12: Compensation in the CLEC Coalition ICA approved in Docket No. 28821. The Arbitrators find that AT&T's proposed language is not substantially the same as the*

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					language in the CLEC Coalition ICA. For example, AT&T Texas's proposed language does not include a description of the two types of FX services (Dedicated FX and Virtual Foreign Exchange (FX)) offered by LECs that appear in the CLEC Coalition. The Arbitrators, therefore, decline to adopt AT&T Texas's proposed language in §§1.4.2 – 1.4.3.2 and instead adopt language approved by the Commission for the CLEC Coalition ICA for this issue. The Arbitrators note that the CLEC Coalition ICA language in § 1.3 applies "bill and keep" compensation to all FX traffic.
AT&T NIM 6 - 4	(a) When should the Parties' obligation to pay Intercarrier Compensation to each other commence? (b) Is it appropriate to require CLECs to demonstrate that Section 251(b)(5) Traffic and ISP-Bound Traffic is roughly balanced with the ILEC's traffic to obtain and maintain a Bill and Keep arrangement?	NIM-6 : Sections : 1.3, *1.4* 1.5 -1.5.3 1.6 -1.6.3 1.7 -1.7.5, *1.7.6,* 1.8 -1.8.4	See UTEX Issues 1-46 and UTEX Responsive issues and positions to NIM 6-1. (a) When the contract becomes effective. (b) and (c) UTEX was forced to return to its 2005 proposals, which did have bill and keep when traffic is in balance. But as noted previously, UTEX is happy to not use bill and keep so long as ***all*** § 251(b)(5) traffic is subject to the FCC $0.0007 price rather than only the kinds AT&T picks and chooses for its own benefit.	(a) The Parties' obligation to pay Intercarrier Compensation to each other should commence when the first commercial call is terminated in Texas between AT&T TEXAS and UTEX. *AT&T Texas states that the parties should begin paying each other compensation for intercarrier traffic on the day the parties agree the network is complete and ready to handle "live" traffic of all pertinent types. Before passing this live traffic, carriers often send test calls over various portions of the network to ensure that the network is routing and completing calls in an appropriate manner and its proposed language ensures that under no circumstances is this test traffic, regardless of the volume, to be compensated under the intercarrier provisions of the contract, according to AT&T Texas. AT&T Texas Ex. 15, McPhee Direct, at 62:16-63:3.* (b) Yes. The Commission has found in Docket 28821 that it is appropriate to require CLECs to	*(a) The Arbitrators conclude that in cases where UTEX and AT&T Texas are already exchanging traffic and the intercarrier compensation arrangements for such traffic remain the same or do not require any system changes as a result of this arbitration, the new intercarrier compensation arrangement will commence on the date this ICA becomes effective. The Arbitrators conclude that it is reasonable for the Parties' obligation to pay intercarrier compensation to commence when the first commercial call is terminated in Texas between the two parties in the following situations: (1) where the Parties are already exchanging traffic but the terms of this ICA will require systems modifications, (2) where the Parties are already exchanging traffic but the traffic types on an existing trunk between AT&T Texas and UTEX will change as a result of this ICA, and (3) where the Parties are not currently exchanging traffic in a given local*

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	(c) In order to obtain and maintain a Bill and Keep arrangement, is it appropriate to establish specific thresholds to be used to determine if Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between the Parties is roughly balanced?			demonstrate the traffic exchanged under the Long-Term Bill and Keep option is "roughly" in balance. This is consistent with FCC guidance. (c) Yes. The Commission determined in Docket 28821 that traffic is out-of-balance if the amount of traffic exchanged between the parties exceeds +/-5% away from equilibrium for three consecutive months. *AT&T Texas states that UTEX's proposed out-of-balance threshold is inconsistent with the Commission's ruling in Docket No. 28821. Furthermore, AT&T Texas objects to UTEX's proposal that the balance of traffic be reviewed every six months throughout the term of the agreement because it would result in the parties repeatedly going back and forth between payment of intercarrier compensation (when traffic is out of balance) and bill and keep (when traffic is in balance), causing an unnecessary administrative burden on the parties. In contrast, AT&T Texas's proposal requires that Section 251(b)(5) traffic and ISP-Bound Traffic be subject to the compensation under Option 1 (i.e. the FCC's Interim ISP Terminating Compensation Plan Rate of $0.0007 per minute of use) for the remainder of the ICA's term. AT&T Texas argues that its proposal is administratively simple and assures that each party will be adequately compensated for terminating the other party's traffic. AT&T Texas Ex. 15, McPhee Direct, at 63:7-64:14.*	*calling area.* *The Arbitrators find UTEX's proposal to impose intercarrier compensation obligations on the Parties for all types of traffic when the ICA becomes effective to be inappropriate because it could result in the Parties applying intercarrier compensation on test calls exchanged by the Parties. Furthermore, the CLEC Coalition and CJP ICAs approved in Docket No. 28821 also require intercarrier obligations to commence when the first commercial call is terminated in the event the CLEC and AT&T Texas have not previously exchanged traffic.* *The Arbitrators adopt the following language to replace §1.3:* *"1.3.1 Where there is preexisting traffic exchanged between the Parties, if this agreement does not change the intercarrier compensation arrangements or changes the intercarrier compensation arrangements without requiring system modifications, the applicable intercarrier compensation arrangement under this agreement will commence for such traffic on the date this agreement becomes effective.* *1.3.2 If the traffic types on an existing trunk in Texas between AT&T Texas and CLEC are changed as a result of this agreement or the changes in the intercarrier compensation arrangements*

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					as a result of this agreement require system modifications, the applicable intercarrier compensation obligations pursuant to this Appendix Intercarrier Compensation will commence for such traffic upon the date the first commercial call is terminated pursuant to this agreement between the Parties on such trunks. The Parties will notify each other of the date when the first commercial call of a type of call covered by this Section is terminated after the change has been effectuated. The Parties agree that test traffic is not subject to compensation pursuant to this Appendix Intercarrier Compensation. *1.3.3 If the Parties are not currently exchanging traffic in a given LATA or Local Calling Area, the intercarrier compensation obligations pursuant to this Appendix Intercarrier Compensation will commence for such traffic upon the date the first commercial call is terminated between the Parties in such LATA or Local Calling Area. The Parties will notify each other of the date when the first commercial call of a type of call covered by this Section is terminated. The Parties agree that test traffic is not subject to compensation pursuant to this Appendix Intercarrier Compensation."* *(b)&(c) Consistent with the Commission's decision in Docket No. 28821 under Intercarrier Compensation DPL Issue SBC-*

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					34, the Arbitrators conclude that it is appropriate to require the traffic exchanged under the Long-Term Bill and Keep option be "roughly" in balance and find that the traffic is out-of-balance if the amount of traffic exchanged between the parties exceeds +/- 5% away from equilibrium for three consecutive months. (Docket No. 28821, Arbitration Award – Track 1 Issues, Intercarrier Compensation – JT DPL – Final, DPL Issue SBC-34 at page 51 of 84 (February 22, 2005)). The Arbitrators also conclude that if the traffic becomes out-of-balance, the FCC ISP compensation rate of $0.0007 per minute of use should be applied for the remainder of the term, because to continue to reevaluate the traffic balance would be administratively burdensome. The Arbitrators therefore decline to adopt UTEX's proposed language in § 1.4. *The Arbitrators find the three options for intercarrier compensation for local traffic (referenced as 251(b)(5) traffic in AT&T's proposed language) and ISP-bound traffic listed in AT&T Texas's proposed language in §§ 1.5-1.5.3 to be consistent with the options offered in the CLEC Coalition and CJP ICAs approved by the Commission in Docket No. 28821. These three options are: Option 1 – Exchange All ISP-Bound Traffic and Section 251(b)(5) Traffic at the FCC's Interim ISP Terminating Compensation Plan Rate; Option 2 – A long term Bill and Keep arrangement for the transport and termination of Section 251(b)(5) Traffic and*

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					ISP-Bound Traffic; and Option 3 – Exchange Section 251(b)(5) Traffic at the specific rates, terms, and conditions established by the Commission for such traffic and ISP-Bound Traffic at the FCC's Interim ISP terminating Compensation Plan rate of $0.0007 per minute of use. The Arbitrators find these three options to be reasonable because UTEX can select the option that it prefers, and Option 1 permits exchange of ISP Bound Traffic and local traffic at the FCC's Interim ISP terminating Compensation Plan rate of $.0007 per minute of use, as required by the FCC. For the reasons delineated in AT&T NIM 6–3 and AT&T NIM 6-12, the Arbitrators find that FX Traffic and Optional EAS are not subject to the same reciprocal compensation rates as local traffic. *The Arbitrators note that AT&T Texas's proposed language in §§ 1.5-1.5.3, 1.6-.6.1.3, 1.7-1.7.5, and 1.8-1.8.4 is similar to the language in the CJP and CLEC Coalition ICAs approved in Docket No. 28821 and is therefore adopted with the following modifications.* *For the reasons discussed in AT&T NIM 6-1, all references to "251(b)(5) Traffic" shall be replaced by "local traffic." In § 1.5.2 relating to Option 2 (long-term Bill and Keep arrangement), the following sentence should be inserted:* *"'Bill and Keep' is an arrangement in which neither of the Parties charges the other Party*

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					for terminating traffic that originates on the other Party's network; instead, each Party recovers from its end-users the cost of both originating traffic that it delivers to the other Party and terminating traffic that it receives from the other Party." *As stated above, the Arbitrators adopt §§ 1.6-1.6.1.3, which address the rates, terms, and conditions for Option 1 (under which the parties exchange ISP-Bound Traffic and local traffic at the FCC's Interim ISP terminating compensation plan rate of $0.0007 per minute of use). The Arbitrators note that the language in § 1.6.2, addressing the ISP-Bound Traffic rebuttable presumption for Option 1, also appears in § 1.8.2 under Option 3. However, this provision appears in the CLEC Coalition and the CJP ICAs under only Option 3, and the Arbitrators therefore decline to adopt the ISP-Bound Traffic rebuttable presumption in § 1.6.2 for Option 1. The Arbitrators also modify AT&T Texas's proposed language in § 1.6.3 relating to Billable Traffic to make it consistent with the language approved in Docket No. 28821 for the CJP ICA as follows:* *"For purposes of this Section 1.6, all ~~Section 251(b)(5)~~ Local Traffic and all ISP-Bound Traffic shall be referred to as "Billable Traffic" and will be billed in accordance with Section ~~11.0~~ 7.0 below. ~~The Party that transport and terminates more "Billable Traffic" ("Out-of-Balance Carrier") will, on a monthly basis, calculate (i) the amount of~~*

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					~~*such traffic to be compensated at the FCC's interim ISP terminating compensation rate set forth in Section 1.6.1.2. The Out-of-Balance Carrier will invoice on a monthly basis the other Party in accordance with the provisions in this Agreement and the FCC's interim ISP terminating compensation plan.*~~**"** *The Arbitrators also direct the parties to include the following language, which appears in the CJP agreement:* *"Each Party will invoice the other Party on a monthly basis for combined Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged between the Parties at the rate set forth in Section 1.6.1.2 above."* *With respect to § 1.7-1.7.5 relating to Long-Term Bill and Keep option (Option 2), the Arbitrators find AT&T Texas's proposed language to be substantially the same as the language approved for the CJP and CLEC Coalition ICAs in Docket No. 28821. The Arbitrators therefore adopt AT&T's proposed language § 1.7-1.7.5 with the following modifications:* *The first sentence in the full paragraph in §1.7 should refer to Option 3 as one of the alternatives to Long-Term Bill and Keep option. In addition, § 1.7 should include "IntraLATA interexchange Traffic" in the list of types of traffic not subject to Long –Term Local Bill and Keep option. The Arbitrators note that the last sentence in § 1.7.4.2*

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					contains incorrect references to the provisions on the reciprocal compensation rates that would apply retroactively in the event that dispute resolution results in the calculations on the balance of traffic exchanged between the parties. The Arbitrators therefore find that the references to Sections 1.7.4 and 1.7.5 should be replaced with references to "Section 1.7.1 and 1.7.2." Section 1.7.1 applies Bill and Keep if the traffic is in balance within +/-5% of equilibrium (50%) and § 1.7.2 applies the compensation rate under Option 1 (i.e. $0.0007 per minute of use) if the traffic is determined to be out-of-balance for three consecutive months. *The Arbitrators also adopt AT&T Texas's proposed language in § 1.7.6 relating to audits on long-term bill and keep traffic and add the following language approved for long-term bill and keep arrangements in Docket No. 28821 for the CLEC Coalition and CJP ICAs:* *"1.7.7 The Parties will consult and negotiate in good faith to resolve any issues of accuracy or integrity of data collected, generated, or reported in connection with audits or otherwise.* *1.7.8 The audit provisions set out in Sections 1.7.5 through 1.7.6 above do not alter or affect audit provisions set out elsewhere in this Agreement."* *Sections 1.8 – 1.8.4 set forth the provisions*

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					that apply Commission-established rates to Section 251(b)(5) Traffic and the FCC's Interim ISP Terminating Compensation Plan rate for ISP-Bound Traffic (Option 3). The Arbitrators note that AT&T Texas's proposed language is substantially similar to the language approved in Docket No. 28821 for the CLEC Coalition and CJP ICAs. The Arbitrators adopt AT&T Texas's proposed language for §§ 1.8-1.8.4 with the following modification. Section 1.8 contains incorrect references to "Sections 1.6.1 through 1.6.4;" these references should be replaced with "Sections 1.8.1 through 1.8.4."
AT&T NIM 6 - 5	AT&T: (a) Should each party be responsible for sending the CPN for traffic that originates on its respective network and for passing on the CPN it receives from a third party? AT&T: (b) How should the Parties be compensated for traffic that is passed without CPN? AT&T: (c) Should a Party	NIM 6: Sections 2.0 – 2.4, 7.5	See UTEX Issues 1-46 and UTEX Responsive issues and positions to NIM 6-1. (a) UTEX has no problem with a requirement to pass signaling information it receives from its customers or passing CPN to AT&T if UTEX ever provides traditional POTS. It is illegal, discriminatory and unreasonable to require signaling of CPN information if the customer is not using traditional TDM or does not otherwise use a phone number. In any event CPN simply cannot be used as a rating tool because it no longer can be assumed to signify anything and particularly geographic location. *In Exhibit 3 –Compensation Terms for mutual exchange of SS7 Traffic where UTEX has proposed language addressing intercarrier compensation for various types of traffic, UTEX's proposal in § 2.2 would require parties to deliver, where technically available, CPN, ANI, Charge Number or ESP Customer Voice Identification Information.*	(a) Yes. Each party should be responsible for sending the CPN for traffic that originates on its respective network and for passing on the CPN it receives from a third party. CPN is necessary to insure that the terminating party is properly compensated. In Docket No. 28821, the staff recommended adoption of AT&T's contract language regarding the exchange of CPN information, and AT&T proposes the same language for UTEX. *AT&T Texas states that Calling Party Number (CPN) was created with the implementation of Signaling System 7 (SS7), with a data field reserved for its use. Each end user that has an assigned telephone number has its CPN as part of the signaling protocol, unless a carrier decides to change, alter, or delete it. AT&T Texas states that carriers use CPN as a tool to jurisdictionalize traffic to determine the originating and terminating end points of a call and apply the appropriate intercarrier*	*The Arbitrators address the delivery of CPN and trunking associated with ESP traffic in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers."* *(a) and (d) The Arbitrators conclude that the parties should provide the Calling Party Number (CPN) information, where technically available to the transmitting party. The Arbitrators note that the FCC and the Commission have recognized the importance of CPN as a rating tool so that calls are properly jurisdictionalized and billed the appropriate compensation rates. In addressing the use of CPN for purposes of billing for calling card traffic, the FCC concluded that CPN should be used to ensure accuracy in billing because "this approach balances the need for accurate intercarrier billing records with the need for some carriers to use CN [Charge Number] for their own retail billing purposes." (Regulation*

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	use commercially reasonable effort to prohibit the use of its local exchange services for the purpose of delivering interexchange traffic? UTEX: (d) Can AT&T require all New Technology traffic and users to have a traditional number even when the technology does not require or need the number?		(b) If the traffic is § 251(b)(5) then the 251(b)(5) rate of $0.0007 applies to it regardless of whether CPN is present. If it is not § 251(b)(5) then it is jointly provided access and each party's access tariff will apply. AT&T and UTEX both have PIU provisions in their respective tariffs and that is how the industry deals with lack of CPN – a PIU is used. *UTEX proposes language in § 7.5 of Attachment 6 to NIM: Intercarrier Compensation that states that if the percentage of calls passed with CPN is greater than sixty percent (60%), all calls exchanged without CPN information will be billed as either local treated traffic or IntraLATA toll traffic in direct proportion to the minutes of use (MOU) of calls exchanged with CPN information.* *In Exhibit 3 –Compensation Terms for mutual exchange of SS7 Traffic where UTEX has proposed language addressing intercarrier compensation for various types of traffic, UTEX proposes in § 7.4 that if f the percentage of calls passed with CPN, ANI, Charge Number, or ESP Customer Voice Identification Information is greater than ninety percent (90%), all calls exchanged without CPN, ANI, Charge Number, and ESP Customer Voice Identification Information will be billed as either Local, non-ESP FX, ESP, or IntraLATA Toll Traffic in direct proportion to the minutes of use (MOU) of calls exchanged with CPN, ANI, Charge Number, or ESP Customer Voice Identification Information. If the percentage of calls passed with CPN,*	*compensation rating, e.g. reciprocal compensation, intrastate, or interstate access. AT&T Texas asserts that use of CPN for billing purposes is standard practice within the industry. AT&T Ex. 19, Direct Testimony of Mark Neinast ("Neinast Direct") at 33:4-9, and AT&T Ex. 20, Rebuttal Testimony of Mark Neinast ("Neinast Rebuttal"), at 5:19-20; 6:14-15.* (b) Consistent with the Commission's ruling in Docket No. 21982 and 28821, the Commission found that if the percentage of calls passed with CPN is greater than 90 percent, all calls exchanged without CPN information will be billed as either local traffic or intraLATA toll traffic in direct proportion to the MOUs of calls exchanged with CPN information. If the percentage of calls passed with CPN is less than 90 percent, all calls passed without CPN will be billed as intraLATA toll traffic. The Commission also concluded that applying this decision would serve as an incentive to parties to continue to send CPN information for their intercarrier calls and minimize any potential for arbitrage. *AT&T Texas states that UTEX's proposed language in § 7.5 eliminates any requirement whatsoever for the passing of CPN because it provides no remedy for what happens when the percentage of traffic passed falls below 60%. AT&T Texas Ex. No. 15, McPhee Direct, at 65: 21-24.* (c) Yes. A party should use commercially	*of Prepaid Calling Card Services, WC Docket No. 05-68, Declaratory Ruling and Report and Order at ¶¶ 33 and 34 (June 30, 2006)). The Arbitrators also note that the Commission found in Docket No. 33323 that the CPN provides telecommunications providers with a geographic origination point associated with the call so the terminating and transiting providers can determine the jurisdiction of the call and apply the appropriate compensation rates and bill for the call. (Docket No. 33323, Arbitration Award at 80 (June 1, 2009)).* *AT&T Texas's proposed language in § 2.1 requires each party to provide Calling Party Number (CPN) as defined in 47 C.F.R. §64.1600(c), which is the FCC's definition of CPN. That rule states, "The term 'Calling Party Number' refers to the subscriber line number or the directory number contained in the calling party number parameter of the call set-up message associated with an interstate call on a Signaling System 7 network." The Arbitrators note that in Docket No. 33323, the Commission found that the FCC's definition of CPN refers to a telephone number as specified in the North American Numbering Plan (NANP) numbering scheme where a telephone number consists of ten-digits represented by the format: NPA-NXX-NXXX. (Docket No. 33323, Arbitration Award at 78-80 (June 1, 2009)). Consistent with the Commission's decision in Docket No. 33323, the Arbitrators find that a valid CPN is the actual telephone number of the calling party (a NANP ten-digit number) listed in the Local Exchange Routing Guide (LERG).*

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			ANI, Charge Number, or ESP Customer Voice Identification Information is less than sixty percent (60%), all calls exchanged without CPN, ANI, Charge Number, and ESP Customer Voice Identification Information will be billed at double the terminating Party's compensation rate (e.g., $0.0014). The proposed § 7.4 would have no meaning unless the Parties' traffic is out of balance. (c) The parties have a dispute over what "interexchange traffic" is or how that definition will be applied. UTEX has solved this problem in numerous ways, however, in its proposals. Specifically UTEX has proposed an entire section on "misrouting." (d) AT&T is trying to impose discrimination and impose unreasonable requirements on New Technology users and business models that do not require – and have no business reason for a number. It is not proper to impose burdensome requirement on a business or technology that is not necessary for the business or technology to function. This is purely a regulatory requirement with no valid purpose. The intended result has nothing to do with arbitrage or misrouting. It is about gaining and maintaining an unfair regulatory advantage over New Technology. UTEX will not willingly agree to contract terms that knowingly discriminate against traffic that does not natively need or require CPN. This is contrary to public policy. *UTEX objects to AT&T Texas's insistence that the CPN parameter information should be a geographic number, arguing that the*	reasonable efforts to prohibit the use of its local exchange services (including, but not limited to, PRI, ISDN and/or Smart Trunks) that such party sells to others for the purpose of delivering Interexchange Traffic. Such prohibition ensures that a party terminating interexchange traffic receives appropriate switched access compensation. *AT&T Texas states that in order to ensure that AT&T Texas and UTEX are properly compensated for Section 251(b)(5), intraLATA Exchange Access, and InterLATA Exchange Access traffic, these different types of traffic must be separated into different trunk groups. The network trunking requirements, if adhered to by the parties, would ensure that the parties are not using their local exchange services for the purpose of delivering interexchange traffic. AT&T Texas Ex. 15, McPhee Direct, at 66: 8-15.* d. AT&T believes that this issue is no longer relevant as a result of the rulings in Order 30. If it remains relevant, then AT&T offers the following: AT&T disagrees that traffic exchanged between UTEX and AT&T can or should be defined as "New Technology traffic" – and the meaning of this term is in any event unclear. In addition, see Answer to (b) above. *AT&T Texas states that the use of telephone numbers is the only means to reach end users on the PSTN and the only means for those end users to reach VOIP end users. Therefore, an*	*The Arbitrators recognize that CPN delivered by the transmitting party may not always represent the true geographic location of the customer and the CPN representation by UTEX's customers may not fit the traditional CPN parameters. The Arbitrators note that use of CPN for billing purposes is standard practice within the industry and while not perfect, provides the best information available for billing purposes as asserted by AT&T Texas. (Hearing on Merits Tr. at 309:19-310:6). Furthermore, with respect to traffic from VOIP end users that terminate on AT&T Texas's network, it is necessary for the VOIP end user to be assigned a telephone number that has CPN in order for the VOIP end user to receive calls from AT&T Texas's customers. The Arbitrators also note that in Docket No. 28821, Intercarrier Compensation DPL SBC-26, while the Commission declined to address the routing or intercarrier compensation for VOIP traffic, it found that the information on the physical location of the end user on the originating end of the call will help the carriers to properly identify the jurisdiction of the call. (Docket No. 28821, Arbitration Award – Track 1I Issues, Master DPL Between SBC and AT&T, MCI, CG, CJP and Birch/Ionex, Intercarrier Compensation, DPL Issue SBC-26 at page 5 (June 17, 2005)). The Commission in that docket adopted language that requires parties to provide the original and true CPN for IP traffic along with other types of traffic. The Arbitrators*

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			result of such an approach would be that the CPN is treated as "invalid" and "no CPN" if the information is a non-geographic number even if the number is, in fact, a dialable, routable NANPA address. UTEX states that users of Internet technologies may freely choose the number they represent to the network, and a user who has been assigned a Texas CPN may freely and often unknowingly represent that CPN while making a call from a location outside Texas. UTEX further argues that CPN representation by its new technology customers that do not fit the traditional CPN parameters is not a statistical anomaly as AT&T Texas believes but is instead the reality of how new technology creates substitutes for PSTN functions, and new technology customers form the core of UTEX's business. UTEX Initial Br. at 17-24.	*end user on the PSTN cannot call a VOIP end user unless the latter has been assigned a telephone number that has CPN. AT&T Texas states that an IP-IP call that never hits the PSTN may not need a telephone number and may use a URL or an IP address to reach each other. AT&T Texas argues that IP-IP calls are not part of the ICA being arbitrated here and are not at issue. AT&T Ex. 20, Neinast Rebuttal, at 5:7-16.*	*conclude that the concerns raised by UTEX do not justify abandoning the current industry practice of using CPN as a means for jurisdictionalizing and billing of calls. For the reasons described above, the Arbitrators decline to adopt the other rating tools proposed by UTEX in §§ 2.2 and 7.4 of its Exhibit 3, (i.e. ANI, Charge Number, and ESP Customer Voice Identification Information).* *(b) With respect to compensation for traffic without CPN, the Arbitrators note that AT&T's proposal is consistent with the Commission's decision in Docket Nos. 21982 and 28821. In response to Intercarrier Compensation Issue SBC-23 in Docket No. 28821, the Commission affirmed its prior decisions and found that if the percentage of calls passed with CPN is greater than 90 percent, then all calls exchanged without CPN information will be billed as either local traffic or intraLATA toll traffic in direct proportion to the MOUs of calls exchanged with CPN information. However, if the percentage of calls passed with CPN is less than 90 percent, all calls passed without CPN will be billed as intraLATA toll traffic. (Docket No. 28821, Arbitration Award – Track 1 Issues, Intercarrier Compensation –JT DPL – Final, DPL Issue SBC-23 at page 41 of 84 (February 22, 2005)). The Commission in Docket No. 28821 concluded that the 90/10 CPN requirement would serve as an incentive to parties to continue to send CPN information for their intercarrier calls and minimize any potential for arbitrage. The Arbitrators find that*

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					UTEX's proposed threshold of 60% traffic with CPN, in § 7.5 of Attachment 6 to NIM: Intercarrier Compensation would allow for 40% of its traffic to be passed unidentified and would fail to provide the necessary incentive for parties to send CPN information in calls and fail to sufficiently minimize the potential for arbitrage. UTEX's proposal also is silent about the remedy when the percentage of traffic passed with CPN falls below 60%. The Arbitrators note that UTEX has proposed different terms in § 7.4 in "Exhibit 3 – Compensation Terms for mutual exchange of SS7 traffic." Those terms do not address the remedy if the percentage of traffic without CPN falls between 60% and 90%. The Arbitrators find that UTEX has not provided support for its proposal in § 7.4 in "Exhibit 3 – Compensation Terms for mutual exchange of SS7 traffic," to subject traffic without CPN, to a rate that is double the terminating Party's compensation rate (namely, $0.0014), if the percentage of calls passed with CPN is less than 60%. Furthermore, UTEX's proposal would not provide the incentive needed for parties to continue to send CPN information for intercarrier calls and minimize the potential for arbitrage. The Arbitrators therefore decline to adopt UTEX's proposal in §7.5 of Attachment 6 to NIM: Intercarrier Compensation or in § 7.4 in "Exhibit 3 – Compensation Terms for mutual exchange of SS7 traffic." *(c) The trunking for ESP traffic is addressed in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers." The*

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					Arbitrators conclude that it is appropriate to include language in the ICA that would prohibit the use of local exchange trunks to deliver interexchange traffic in all other cases. *The Arbitrators find that UTEX's proposed language and AT&T Texas's proposed language for §§ 2.0- 2.2 are fairly similar to the language approved by the Commission in Docket No. 28821 for the CLEC Coalition ICA. However, the Arbitrators modify the parties' proposed language for §§ 2.1-2.2 to make it consistent with the language in the CLEC Coalition ICA and the Arbitrators' decision on intercarrier compensation for ESP traffic, as follows:* *"2.1 Each Party to this Agreement will be responsible for the accuracy and quality of its data as submitted to the respective Parties involved. For all traffic including, without limitation, Interexchange Circuit-Switched Traffic, IP Traffic, ESP Traffic, ~~Switched Access Traffic~~ and wireless traffic, each Party shall provide Calling Party Number ("CPN") as defined in 47 C.F.R. § 64.1600(c) ("CPN") in accordance with Section 2.3. In addition, each Party agrees that it shall not strip, alter, modify, add, delete, change, or incorrectly assign any CPN. CPN shall, at a minimum, include information that accurately reflects the physical location of the end user that originated and/or dialed the call, when including such information is technically feasible. If either party identifies improper, incorrect, or fraudulent use of local exchange*

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					services (including, but not limited to PRI, ISDN, and/or Smart Trunks), or identifies stripped, altered, modified, added, deleted, changed, and/or incorrectly assigned CPN, the Parties agree to cooperate with one another to investigate and take corrective action. *2.2 Each Party will include in the information transmitted to the other for each call being terminated on the other's network (where technically available to the transmitting party), the originating Calling Party Number (CPN)."* *The Arbitrators adopt AT&T Texas's proposed language in § 2.3 because it reflects the Commission's decision in Docket Nos. 21982 and 28821 regarding the 90/10 CPN rule. However, the reference to § 251(b)(5) should be replaced with "local" traffic for reasons delineated under DPL issue AT&T NIM 6-1. Finally, the Arbitrators adopt AT&T Texas's proposed language for § 2.4 because it is essentially the language approved by the Commission in Docket No. 28821 for the CLEC Coalition.*
AT&T NIM 6 - 6	(a) What are the proper rates for transport and termination of §251(b)(5) traffic? (b) Is UTEX entitled to the	NIM-6 : Sections 3.0 – 3.6.6	See UTEX Issues 1-46 and UTEX Responsive issues and positions to NIM 6-1. (a) $0.0007 per minute of use. (b) This question is moot since UTEX has chosen to use a single unified rate that compensates for both tandem and end office: $0.0007.	(a) The Commission found in Docket 21982 and 28821 that the bifurcated rate continues to be the most accurate measurement for determining the costs incurred by each parties' end office call termination function. (b) In Docket No. 21982 and 28821, the Commission held that the application of the blended transport rates adequately compensates	*The Arbitrators note that the disputed language submitted for resolution appears to include §§ 3.4 through 3.4.1.2. However, the contract language in § 3.4 through 3.4.1.2 is addressed in DPL issue NIM 6-7 below.* *(a) The rates for transport and termination of § 251(b)(5) traffic in § 3.0 would apply if UTEX chooses Option 3. The Commission determined*

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	tandem interconnection rate?			CLECs for tandem switching on calls terminated on a multi-function switch and also ensures symmetry of intercarrier compensation rates between CLECs and AT&T. AT&T's proposed contract language is consistent with the Commission's ruling. *AT&T Texas claims that in § 3.5, UTEX is proposing the full tandem interconnection rate, plus Blended/Common Transport, plus two additional tandem transport elements consisting of Termination minute of use and Facility Mile minute of use. Although UTEX lists a blended rate in §3.5, UTEX is seeking full tandem compensation in its proposed language in §3.3, according to AT&T Texas. AT&T Texas Ex. 15, McPhee Direct, at 68:18-24.*	*in Docket No. 28821 under Intercarrier Compensation DPL Issue SBC 64 that the bifurcated end office rate continues to be the most accurate measurement for determining the costs incurred by each Party's end office call termination function. (Docket No. 28821, Arbitration Award – Track 1 Issue, Intercarrier Compensation – JT DPL – Final, DPL Issue SBC-64 at pages 80-81 of 84 (February 22, 2005)). The Arbitrators find that the rates proposed by AT&T Texas for end office switching, tandem switching, and transport reflect the rates established by the Commission in Docket No. 21982 and approved by the Commission in Docket No. 28821 for the CLEC Coalition and CJP ICAs. The Arbitrators, therefore, adopt AT&T Texas's proposed language in §§ 3.0-3.3.1.3.2 with modifications. All references to "§251(b)(5) Traffic" should be replaced with "Local Traffic" for reasons stated under DPL Issue AT&T NIM 6-1 above. Furthermore, the incorrect reference to Option 1 in § 3.1 should be replaced with Option 3.* *(b) In Docket No. 28821 under Intercarrier Compensation DPL Issue SBC 15, the Commission affirmed its previous adoption of blended transport rates in Docket No. 21982. (Docket No. 28821, Arbitration Award – Track 1 Issues, Intercarrier Compensation – JT DPL – Final, DPL Issue SBC-15 at page 13 of 84 (February 22, 2005)). Consequently, the Arbitrators conclude that the blended transport rates proposed by AT&T Texas adequately compensate UTEX for tandem switching when it employs a multi-function*

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					switch. UTEX has not provided adequate explanation for its proposed language in §§ 3.3.2-3.4 or its proposed rates in § 3.5, and therefore UTEX's proposed language is not adopted. AT&T Texas's proposed language in §§ 3.5-3.6.6 reflects the Commission's decisions in Docket Nos. 28821 and 21982 regarding the appropriate reciprocal compensation for both local traffic terminated by a Party using a multi-function switch network and for local traffic terminated not using a multi-function switch. The Arbitrators, therefore, adopt AT&T Texas's proposed language in §§ 3.5-3.6.6, which is substantially similar to the language approved in Docket No. 28821 for the CJP ICA. However, the Arbitrators conclude that all references to "§251(b)(5) Traffic" should be replaced with "Local Traffic" for the reasons stated under DPL issue AT&T NIM 6-1 above. Furthermore, the incorrect reference to § 3.3.4 in § 3.5.2 should be replaced with §3.3.1.3.
AT&T NIM 6 - 7	(a) Should UTEX have the sole obligation to enter into compensation arrangements with third party carriers that terminate traffic to UTEX when AT&T TEXAS is the ILEC entity providing the use of the end office switch (e.g.,	NIM-6 : Sections 1.1; 2.5; 3.4 – 3.4.1.2	See UTEX Issues 1-46 and UTEX Responsive issues and positions to NIM 6-1. (a) and (b) UTEX will never procure an AT&T switch port. Calls from UTEX to AT&T's network and addressed to AT&T numbers that UTEX routes to AT&T should be treated as § 251(b)(5) traffic. Calls originating from AT&T's network and AT&T numbers that AT&T hands to UTEX is § 251(b)(5) traffic. This is not some form of transit. UTEX, however, will defer to the Commission's prior treatment of this issue in Docket 28821. If the PUC believes terms separating this traffic out so that UTEX does not bill AT&T for calls coming from customers of a CLEC using an	(a) Yes. Consistent with the decisions in Docket No. 21982 and 28821, the Commission found that, where technically feasible, the terminating carrier's records should be used to bill originating carriers for reciprocal compensation, unless both the originating and terminating carriers agree to use originating records. When UTEX originates traffic to or terminates traffic from an end office switch used by AT&T TEXAS as the ILEC providing use of the end office switch (e.g., switching capacity) to a third party CLEC, UTEX should be obligated to enter into compensation agreements with such third party carriers. The respective parties should seek compensation directly from the originating	*(a) The Arbitrators find that it is appropriate to include language in the ICA to address compensation arrangements for traffic exchanged between UTEX and a third party carrier who serves its end users using network elements including end office switching purchased from AT&T Texas on a wholesale basis.* *The ICA language in § 1.1 for traffic originated by third party carriers or UTEX over local circuit switching purchased from AT&T Texas on a wholesale basis is addressed under DPL issue AT&T NIM 6-1.*

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	switching capacity) to such third party carrier, and if it does not enter into such arrangements, should it indemnify AT&T when the third party carriers seek compensation from AT&T? (b) What are the appropriate intercarrier compensation rates, terms and conditions for traffic that is terminated to a CLEC that purchases end office switching from AT&T TEXAS on a wholesale basis?		AT&T switch port UTEX will suppress billing to AT&T. UTEX will <u>not</u>, however, pay AT&T a transit rate.	carrier, not AT&T as the ILEC entity providing the use of the end office switch. Moreover, AT&T should be indemnified from any form of compensation to the third party carrier as AT&T should not be required to function as a billing intermediary, e.g., clearinghouse. _ (b) In Docket No. 28821 and 21982, the staff noted that prior commission decisions (Mega-Arbitrations and Docket 21982) as well as FCC rules do not distinguish between facilities-based traffic and traffic originated by CLEC over local circuit switching purchased from AT&T on a wholesale basis in the application of reciprocal compensation rates. The Commission-established reciprocal compensation rates are applicable to traffic originated and terminated in a local calling area regardless of whether such traffic terminates on the network of a facilities based carrier or a carrier that originates traffic over local circuit switching purchased from AT&T on a wholesale basis. As such, AT&T's language accurately depicts the treatment of such traffic by applying the FCC plan rate for the transport and termination of Section 251(b)(5) Traffic and ISP-Bound Traffic for interswitch traffic if UTEX elects billing Option 1.	*AT&T Texas's proposed language in § 2.5 would require UTEX to enter into intercarrier compensation arrangements with the third party CLEC and indemnify AT&T Texas from any form of compensation if UTEX and the third party fail to enter into intercarrier compensation arrangements. AT&T Texas's proposed language in § 2.5 does not require UTEX to pay transit to AT&T Texas, and therefore UTEX's concern is adequately addressed.* *The Arbitrators note that the issue of compensation for third party UNE-P traffic was addressed in Docket No. 28821 under Intercarrier Compensation Issue SBC-32. (Docket No. 28821, Arbitration Award – Track 1 Issues, Intercarrier Compensation – JT DPL – Final, DPL Issue SBC-32 at pages 44-46 of 84 (February 22, 2005)). Consistent with the Commission's decision in Docket No. 28821, the Arbitrators conclude that in order to ensure accurate billing for calls originated or terminated by a CLEC using AT&T Texas's end office switching on a wholesale basis, AT&T Texas shall provide appropriate billing records to the appropriate CLEC. This will allow the terminating CLEC to directly bill compensation to the originating CLEC. The Arbitrators adopt AT&T's Texas proposed language in § 2.5 with the following additional language, approved in Docket No. 28821, to be added at the end of § 2.5:* *"<u>When a call is terminated to a CLEC using an end office switch port purchased on a wholesale basis from AT&T TEXAS, AT&T</u>*

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					TEXAS will provide terminating billing records including the OCN of the originating carrier to the terminating CLEC for all calls terminated on the wholesale end office switch port to allow the terminating CLEC to directly bill reciprocal compensation to the originating carrier. *Where CLEC is using terminating recordings to bill reciprocal compensation, AT&T TEXAS will provide detailed calls records to identify wholesale end office switch originating traffic including the OCN of the originating carrier to the originating and terminating carriers, and the terminating CLEC will bill the originating wholesale end office switch carrier for MOUs terminated on CLEC's network. The terminating carrier may obtain billing records identifying the originating carrier from AT&T TEXAS upon execution of a Non-Disclosure Agreement."* *b) Although UTEX states that it does not intend to procure a switch port from AT&T Texas, the Arbitrators find that it is appropriate for the ICA to include language regarding the appropriate intercarrier compensation rates, terms, and conditions for traffic that is terminated to UTEX in the event it chooses to purchase end office switching from AT&T Texas on a wholesale basis. The Arbitrators conclude that all references in §§ 3.4 – 3.4.1.2 to § 251(b)(5) traffic shall be replaced with "local traffic," and the incorrect reference to § 3.3.4 in § 3.4.1.2 shall be replaced with § 3.3.1.3. The Arbitrators adopt AT&T Texas's proposed language in §§*

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					3.4-3.4.1.2 with the foregoing modifications.
AT&T NIM 6 - 8	(a) Is it appropriate to include language for other telecommunications traffic that could be traded outside of a local calling scope? (b) What is the appropriate form of intercarrier compensation for IntraLATA Interexchange traffic?	NIM-6: Section: 3.7, *3.7.1-3.7.3*	See UTEX Issues 1-46 and UTEX Responsive issues and positions to NIM 6-1. (a) No. If it is "telecommunications" exchanged between LECs and is not jointly provided access carved out by § 251(g) then it is subject to the $0.0007 rate and no other. (b) UTEX and AT&T have different definitions for "IntraLATA Interexchange" See UTEX GTC § 51.61. UTEX will not be an intraLATA PIC (or an InterLATA PIC) and does not provide Telephone Toll. So UTEX will not be handing AT&T any IntraLATA Interexchange traffic for termination or transit. If AT&T hands any AT&T Texas intraLATA Interexchange traffic to UTEX, then AT&T is acting as an IXC and will be providing Telephone Toll. UTEX will be entitled to recover access charges under FCC rules and § 251(g).	(a) Yes. In order to maintain contractual completeness and to avoid potential compensation disputes, the Commission staff found in Docket 28821 that it is appropriate for the contract language to include compensation for various types of traffic, including non-local traffic. AT&T TEXAS identifies various compensation scenarios that, if the contract were silent, could mistakenly be interpreted to be compensable by reciprocal compensation under Section 251(b)(5). (b) In Docket 28821, the Commission reaffirms its prior decision in Docket No. 21982 that reciprocal compensation only applies to calls that originate and terminate with the Commission established local calling area. IntraLATA toll calls are therefore subject to access charges. IntraLATA interexchange traffic is not Section 251(b)(5) traffic and is not subject to reciprocal compensation. IntraLATA interexchange traffic is offered pursuant to Commission approved access tariffs and should be compensated accordingly.	*(a) Consistent with the Commission's decision in Docket No. 28821 under Intercarrier Compensation DPL Issue SBC-17, the Arbitrators conclude that in order to maintain contractual completeness and to avoid compensation disputes, it is appropriate to include language in the ICA that addresses compensation for various types of traffic that may be exchanged between the parties, which AT&T Texas's proposed language does. (Docket No. 28821, Arbitration Award – Track 1 Issues, Intercarrier Compensation – JT DPL – Final, DPL Issue SBC-17 at pages 23-24 of 84 (February 22, 2005)). The Arbitrators note that the compensation rates established by the Commission for the different types of traffic exchanged between LECs vary, depending on the nature of the traffic, the costs of transporting and terminating the traffic, and other relevant policy and regulatory considerations. The Arbitrators note that AT&T Texas's proposed language is substantially similar to the language approved for the CJP ICA in Docket No. 28821. The Arbitrators adopt AT&T Texas's proposed language in §§3.7 and 3.7.1-3.7.2 with the following modification: "Transit traffic" should be added to the list of non-local traffic in §3.7.1.* *The Arbitrators decline to adopt AT&T Texas's proposed language in §3.7.3, which states that the parties agree that physical interconnection, routing, and trunking of ISP calls on an inter-exchange basis, either IntraLATA or InterLATA, shall be as specified in the Agreement for all*

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					other traffic exchanged including, but not limited to, the need to route over Meet Point Billed Trunks. The Arbitrators conclude that including language on physical interconnection, routing, and trunking of certain types of ISP calls in the Appendix on Intercarrier Compensation is unnecessary given that the physical interconnection, routing, and trunking of all types of traffic exchanged between the Parties, including ISP calls, is addressed elsewhere in the Agreement. *(b) The issue of the appropriate form of intercarrier compensation for IntraLATA Interexchange traffic is addressed under DPL issue AT&T NIM 6-10.*
AT&T NIM 6 - 9	Should non 251/252 services such as Transit Services be negotiated separately?	NIM-6: Sections: 4.0-4.6, *8.0-8.2*	See UTEX Issues 1-46 and UTEX Responsive issues and positions to NIM 6-1. Transit is part of 251/252, so the premise in the question is incorrect. Further AT&T did not ever offer UTEX any agreement for transit. We do not have it now. AT&T is attempting to deny UTEX the right to arbitrate an open issue and then wants favorable treatment to include unseen language. If AT&T does not provide transit language – and if transit is not within 251/252 – then it cannot be arbitrated. But transit is 251/252. But their new language (whatever it is) cannot be considered.	Yes. It is AT&T's position that transit service is a non-251(b) or (c) service, is not the subject of mandatory negotiations between the parties, and is not arbitrable. Accordingly, the Commission should decline UTEX's attempt to arbitrate this issue. As a non-251(b) or (c) service, transit service should be negotiated separately, and AT&T is prepared to offer UTEX the separate agreement that is attached to this DPL to address transit service. In the event that the Commission determines that this issue is arbitrable, it should adopt AT&T's proposed language as it more accurately identifies and defines the different types of Transit traffic.	*This issue is addressed in the text of the Award in the section titled "Transit Services."*
AT&T NIM 6 -	What is the appropriate	NIM-6: Sections: 5.0-5.2	See UTEX Issues 1-46 and UTEX Responsive issues and positions to NIM 6-1.	In Docket 28821the Commission reaffirms its prior decision in Docket No. 21982 that	*The Arbitrators find that the intercarrier compensation for IntraLATA toll traffic is access*

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10	treatment and form of intercarrier compensation for IntraLATA Toll Traffic?		This is essentially the same question as NIM 6-9. See UTEX's Position Statement to NIM 6-9. *In Exhibit 3 – Compensation Terms for Mutual Exchange of SS7 Traffic, where UTEX has proposed language addressing intercarrier compensation for various types of traffic, in § 5.2, UTEX proposes that all "1+" and 8YY traffic to or from an ESP should be compensated at the interstate rate for Feature Group D or 8YY service, as appropriate.*	reciprocal compensation only applies to calls that originate and terminate with the Commission established local calling area. IntraLATA toll calls are therefore subject to access charges.	*charges, which appears to be undisputed, judging by the ICA language submitted for § 5.2. The Arbitrators adopt AT&T Texas's proposed language for § 5.0 and § 5.2, with modifications. For reasons described in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers," the Arbitrators modify the heading of § 5.0 to include InterLATA Interexchange Toll Traffic, specify that the section applies when a party to this ICA is an IXC, and add § 5.3 to address application of access charges for the termination of interLATA interexchange traffic. Furthermore, given that the compensation for other types of interexchange traffic originating and terminating within a LATA is addressed in other sections of Attachment 6 to NIM, the Arbitrators clarify in § 5.2 that the traffic at issue in this section is IntraLATA traffic not considered to be Local Traffic, ISP-Bound Traffic, ESP Traffic, Optional EAS traffic, FX Traffic, FGA Traffic, Meet Point Billing Traffic, or Cellular Traffic. The Arbitrators note that the language adopted for § 5.2 is similar to the language approved in Docket No. 28821 for the CJP ICA.* *"5.0 ~~Reciprocal~~ Compensation for Termination of IntraLATA <u>and InterLATA</u> Interexchange Toll Traffic <u>When a Party Is an IXC.</u>* *5.2 For intrastate intraLATA interexchange ~~service~~ traffic~~,~~ <u>not considered Local Traffic, ISP-</u>*

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					Bound Traffic, ESP Traffic, Optional EAS Traffic, FX traffic, FGA Traffic, Meet Point Billing Traffic, or Cellular Traffic, compensation for termination of this traffic will be at terminating access rates for Message Telephone Service (MTS) and originating access rates for 800 Service, including the Carrier Common Line (CCL) charge, as set forth in each Party's intrastate access service tariff. For interstate intraLATA service, compensation for termination of this traffic will be at terminating access rates for MTS and originating access rates for 800 Service including the CCL charge, as set forth in each party's interstate access service tariff. *5.3 For interLATA interexchange traffic, compensation for termination of this traffic will be at access rates as set forth in each Party's own applicable interstate or intrastate access tariffs.*" *The issue of intercarrier compensation for traffic to or from an ESP is addressed in the text of the Award in the section titled "Intercarrier Compensation for Traffic involving UTEX's ESP customers." For the reasons discussed there, the Arbitrators decline to adopt UTEX's proposed language in § 5.2 of Exhibit 3 to NIM*

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					for traffic to or from an ESP. *The Arbitrators note that § 5.1 includes UTEX's proposed language for Optional EAS traffic, which the Arbitrators declined to adopt under DPL issue AT&T NIM 6-12.*
AT&T NIM 6 - 11	(a) Should this Agreement include terms and conditions for Meet Point Billing that are in accordance with the guidelines contained in the Ordering and Billing Forum's MECOD and MECAB documents? (b) What are the appropriate compensation rates for the termination of MPB traffic? (c) Should out-dated references to IBC (Initial Billing Company) be removed from the Meet Point Billing arrangement	NIM-6: Sections: 6.0 – 6.6 .	See UTEX Issues 1-46 and UTEX Responsive issues and positions to NIM 6-1. (a) UTEX's terms have provisions for jointly provided access and they adopt MECOD and MECAB. *UTEX disagrees with AT&T Texas's characterization of Meet Point Billing, by asserting that if Meet Point Billing is a service, then both parties provide the service to one another when either party is the directly serving party for the IXC. UTEX Ex. 3, Rebuttal Testimony of Lowell Feldman at 40:15-41:6.* *In Exhibit 3 – Compensation Terms for Mutual Exchange of SS7 Traffic, where UTEX has proposed language addressing intercarrier compensation for various types of traffic, in §§ 6.0-6.6, UTEX's proposed language inserts the word "Legacy" before the term "IXC" so that its proposed language applies only to Legacy IXCs.* (b) UTEX's terms implement MPB. (c) The reference is not out-dated. (d) Yes. UTEX's terms provide for this result. UTEX's call flow diagrams for jointly provided IXC traffic reflect UTEX's understanding of how MECOD and NECAB are to be applied. AT&T	(a)Yes. Consistent with the Commission staff's recommendation in Docket No. 28821, AT&T's proposed language for Meet Point Billing arrangements offers the most current, up-to-date terms and conditions consistent with current industry guidelines, as reflected in the OBF-approved MECAB. In a Meet Point Billing arrangement for IXC traffic, CLEC and AT&T Texas jointly provide the switched access service. *AT&T Texas states that Meet Point Billing is a service AT&T Texas offers to a CLEC so that a CLEC's end user can access an IXC of his or her choice without the CLEC having to be directly interconnected with the IXC. The CLEC provides the originating (or terminating) switching function and transport between its end office and AT&T Texas provides tandem switching and transport between its tandem and the IXC and each bills the IXC from its access tariff for the functions each performs. AT&T Texas Ex. 15, McPhee Direct, at 75:5-11.* (b) For interLATA traffic and intraLATA traffic, compensation for the termination of MPB traffic will be at access rates as set forth in each Party's own applicable interstate or intrastate access tariffs. UTEX improperly asserts that when such traffic is contained within an Optional Calling	*(a)-(d) The Arbitrators find that Meet Point Billing arrangements apply to both parties, regardless of which party directly serves the IXC. Undisputed language in § 6.2 recognizes that interexchange carriers may be served via either party's access tandem switch.* *The Commission in Docket No. 28821 adopted, under Intercarrier Compensation Issue SBC-56, AT&T Texas's language (then SBC Texas's) for the Birch Telecom/Ionex Communications ICA because it appeared to be consistent with current industry guidelines, as reflected in the Ordering and Billing Forum approved Multiple Exchange Carrier Access Billing (MECAB) guidelines. (Docket No. 28821, Arbitration Award – Track 1 Issues, Intercarrier Compensation – JT DPL – Final, DPL Issue SBC-56 at pages 73-74 of 84 (February 22, 2005)). The Arbitrators note that the language for §§ 6.0-6.6 with AT&T Texas's proposed modifications is substantially similar to the language approved by the Commission in Docket No. 28821 for the Birch Telecom/Ionex Communications ICA. For reasons described below, the Arbitrators adopt AT&T Texas's proposed language for §§ 6.0-6.6, with modifications described below.* *For reasons described in the text of the Award in the section titled "Intercarrier Compensation for*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
	provisions? (d) Where the Exchange Message Interface (EMI) records cannot be transferred due to a transmission failure, should records be provided via a mutually acceptable medium.		must review those diagrams to state whether it agrees with UTEX's implementation. The dispute is not whether MECAB/MECOD should be used; it is – maybe – how they will be implemented, and this can be through call flow diagrams.	Area, it should be governed by the compensation terms for Optional EAS Traffic. (c) Yes. Consistent with the Commission staff's recommendation in Docket No. 28821, IBC is no longer part of MPB since the industry no longer exchanges summary usage records for MPB. Therefore, references to IBC should be removed. (d) Yes. The Parties do not need to contractualize an alternate methodology for transmitting records when a conduction failure occurs. As technology changes, and as the Parties experience enhancements to their respective billing and/or record exchange systems, a process that might be mutually acceptable today may be obsolete by the time a transmission failure occurs. AT&T's language offers more flexibility in arriving at a medium that is equally suitable to both Parties.	*traffic Involving UTEX's ESP Customers," the Arbitrators have modified the heading for § 6 to clarify that the provisions of the section apply to Third Party IXCs and added a new § 6.7 to address a situation where a third party IXC does not have a carrier identification code (CIC) assigned by NANPA or an access customer terminal location (ACTL) identifier. Also, the Arbitrators modify § 6.1 to include compensation for origination of intercompany traffic and indicate that the compensation is for intercompany Meet Point Billing Traffic. In addition, the Arbitrators adopt UTEX's proposed language for §§ 6.1 and 6.2 because the language is consistent with the language approved in Docket No. 28821 for the CJP ICA.* *"6.0 Compensation for Origination and Termination of Switched Access Service Traffic to or from ~~an~~ a Third-Party Interexchange Carrier (IXC) (Meet-Point Billing (MPB) Arrangements).* *6.1 For interLATA traffic and intraLATA traffic, compensation for origination or termination of intercompany Meet Point Billing traffic will be at access rates as set forth in each Party's own applicable interstate or intrastate access tariffs. When such traffic is contained in the Optional Calling Areas, compensation will be applied pursuant to Section 8.0*

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					below.~~5.0 above~~. *6.7 If an IXC interconnected to a Party does not have a CIC assigned by NANPA and an ACTL identifier, the other Party may bill the interconnecting Party instead of billing the IXC."* *The Arbitrators note that § 6.3 contains undisputed language. The Arbitrators adopt the remaining sections, §§ 6.4-6.6, with AT&T Texas's proposed modifications because the language is substantially similar to the language approved by the Commission in Docket No. 28821 for the Birch Telecom/Ionex Communications ICA.* *The Arbitrators decline to qualify the terms "interexchange carriers" or "IXC" with the word "Legacy" as proposed by UTEX because the assessment of switched access charges on IXCs does not depend on whether an IXC is a "Legacy IXC." Furthermore, the word "Legacy" does not appear in FTA § 251(g), which addresses the requirements for the continued provision of exchange access information access and exchange services for such access to interexchange carriers and information service providers.* *The issue of whether call flow diagrams should be incorporated into the ICA is addressed under DPL issues UTEX 31 and UTEX 33.*

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Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
AT&T NIM 6 - 12	What is the appropriate form of intercarrier compensation for Optional EAS traffic?	NIM-6 : Sections 5-5.1, 6.1, 8.0 – 8.3	See UTEX Issues 1-46 and UTEX Responsive issues and positions to NIM 6-1. This is essentially the same as NIM 6-8(a). See UTEX's Position Statement to NIM 6-8. If it is telecommunications between LECs then it is § 251(b)(5) and the $0.0007 applies. If it is § 251(g) then access applies. Optional EAS is § 251(b)(5), however, and therefore the $0.0007 and no other rate applies. The Arbitrators required UTEX to return to its 2005 proposals, notwithstanding the significant change of law that occurred as a result of the *Core Mandaums Order* which made clear that all LEC-LEC traffic is § 251(b)(5) and the same rate must be applied to it. As a result, there can no longer be separate treatment for « FX » traffic or « EAS » traffic. It is all subject to the same rate.	Consistent with the Commission staff's recommendation in Docket No. 28821, Optional EAS traffic is not subject to reciprocal compensation. AT&T's contract language reflects the Commission established rates, terms and conditions in the Mega Arbitration proceedings and in the predecessor T2A. It has also been modified to include a description of calls to which the compensation applies, in addition to requiring AT&T to provide a list of optional calling areas to CLECs upon request, as ordered by this Commission in Docket No. 28821. *AT&T Texas objects to UTEX's proposed language because it would allow UTEX to pick and choose from compensation arrangements AT&T Texas may have with other carriers without taking all related terms and conditions. AT&T Texas asserts that the FTA does not allow CLECs to pick and choose rates out of other carriers' ICA or out of tariffs and that the FCC takes an "all-or-nothing" approach to § 252(i), which allows a CLEC to adopt another CLEC's ICA in its entirety. AT&T Texas Ex. No. 15, McPhee Direct, at 78:12-79:16; AT&T Initial Br. at 165.*	*The Arbitrators conclude that Optional EAS Traffic should be compensated using a transport and termination rate of $0.002487 per minute of use (MOU) with no additives. The Arbitrators note that although UTEX's position statement proposes a rate of $0.0007 per MOU for Optional EAS traffic, its proposed language on Optional EAS traffic in §§ 5-5.1 reflects the same rate ($0.002487 per MOU) as that proposed by AT&T Texas and approved by the Commission in Docket No. 28821. The Arbitrators note that AT&T Texas's proposed language on Optional EAS traffic in §§ 8.0-8.2.1 is substantially similar to the language approved in Docket No. 28821 for the CLEC Coalition ICA. The Arbitrators, therefore, adopt AT&T Texas's proposed §§ 8.0-8.2.1.* *However, the Arbitrators decline to adopt AT&T Texas's proposed § 8.3, which requires the reciprocal payment of an additive. The Commission previously concluded in Docket No. 16630 that Optional EAS service is "telephone exchange service" under FTA § 153(47)(B) because Optional EAS service is comparable to local service. (Application of Lone Star Net, Inc. for Compulsory Arbitration to Establish an Interconnection Agreement Between Lone Star Net, Inc. and Southwestern Bell Telephone Co., Docket No. 16630, Arbitration Award at 5 (Mar. 7, 1997)). As a result of the Commission's conclusion that Optional EAS is telephone exchange service, Optional EAS rates must comply with the*

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					reciprocal compensation provisions of the FTA and the FCC's rules. In the Core Mandamus Order, the FCC concluded that "section 251(b)(5) is not limited to local traffic," based in part on the fact that "Congress used the term 'telecommunications,' the broadest of the statute's defined terms" when defining the types of traffic subject to that section. (In the Matter of Intercarrier Compensation for ISP-Bound Traffic, CC Docket 99-68, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking ¶¶ 7-8, 24 FCC Rcd. 6475 (rel. Nov. 5, 2008) (Core Mandamus Order)). The FCC also recognized in the Core Mandamus Order, however, that FTA § 251(g) carved out certain types of traffic that would otherwise be subject to FTA § 251(b)(5). Core Mandamus Order ¶ 16. Specifically, FTA § 251(g) carves out "exchange access, information access, and exchange services for such access to interexchange carriers and information service providers" from the reciprocal compensation obligations of FTA § 251(b)(5). For traffic subject to the carve out, the pre-FTA rules applicable to that traffic continue to apply rather than the reciprocal compensation rules. *Telephone exchange service is not a type of traffic carved out by FTA § 251(g). Consequently, because the Commission has found Optional EAS to be telephone exchange service, Optional EAS rates must comply with the reciprocal compensation*

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					provisions of the FTA and the FCC's rules. The Optional EAS rates approved in the Docket No. 28821 ICAs include a transport and termination rate of $0.002487 per MOU and a toll additive "paid by CLEC to SBC TEXAS . . . for toll-free calls made by a SBC TEXAS customer to CLEC's optional 2-way EAS customer." In Docket No. 16630, the Commission described this toll additive as a way to "replace a portion of either lost toll or lost access" that the ILEC would forgo by not charging its own customer toll charges for a call to a CLEC's 2-way optional EAS customer. (Docket No. 16630, Arbitration Award at 8). The Arbitrators conclude that this toll additive is not consistent with the reciprocal compensation rules that apply to traffic, like Optional EAS Traffic, that is subject to FTA § 251(b)(5). Specifically, FCC Rule 51.703(b) states, "A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network." The additive for Optional EAS Traffic violates this rule because it requires the terminating LEC to compensate the originating LEC for the originating LEC's lost toll or access charge revenue. In addition, the additive does not appear consistent with the FCC's TELRIC pricing standard for reciprocal compensation because it is based not on the LEC's cost but on replacement of lost revenue. FCC Rule 51.705(a)(1). For these reasons, the Arbitrators conclude that the additive should not be included in the ICA's Optional EAS

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
					compensation provision. *In its DPL position statement, UTEX asserts that Optional EAS service should be subject to the same $0.0007 per MOU rate as Local Traffic. While the Arbitrators agree that FTA § 251(b)(5) applies to this traffic, nothing requires the rates for Local Traffic and Optional EAS Traffic to be the same. UTEX has not established that the cost-based rate previously approved by the Commission for Optional EAS Traffic service should be changed.* *In addition, the Arbitrators decline to adopt UTEX's proposed language on Optional EAS traffic in §§ 5-5.1, which would allow UTEX to opt-in to the Optional EAS rates between AT&T Texas and other ILECs. The Commission decided in Docket No. 28821 under Intercarrier Compensation DPL Issue SBC-4 that the FCC's "all-or-nothing rule" requires a requesting carrier seeking to avail itself of terms in an ICA to adopt the agreement in its entirety, taking all rates, terms, and conditions from the adopted agreement. Allowing UTEX to opt into reciprocal compensation arrangements without also adopting all other terms of the ICA, as UTEX proposes, would conflict with the FCC's "all-or-nothing rule." (Docket No. 28821, Arbitration Award – Track 1 Issues, Intercarrier Compensation – JT DPL – Final, DPL Issue SBC-4 at pages 4-5 of 84 (February 22, 2005)).*

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					The Arbitrators note that UTEX's proposed language includes a transit rate for Optional EAS. The appropriate transit rates for various types of traffic including Optional EAS traffic are addressed under DPL issue AT&T NIM 6-9. *With respect to UTEX's proposed language in §6.1 regarding the application of Optional EAS compensation rates to InterLATA and IntraLATA traffic when such traffic is contained in Optional Calling Areas, the Arbitrators note that UTEX's proposed language has been adopted under DPL Issue AT&T NIM 6-11 because the language is consistent with the language approved in Docket No. 28821 for the CJP ICA.* *The Arbitrators also note that the parties' proposed language in Attachment 6 to NIM refers in some cases to Optional EAS Traffic and in other cases to Optional Calling Area Traffic. The parties have not addressed whether one term is more appropriate than the other, so the Arbitrators direct the parties to use the term Optional EAS Traffic in a manner consistent with the Docket No. 28821 CLEC Coalition and CJP ICAs.*
AT&T NIM 6 - 13	WITHDRAWN				
AT&T NIM 6 - 14	(a) Should AT&T utilize terminating records to bill originating carriers for	NIM-6 : Sections 7.0 – 7.5	See UTEX Issues 1-46 and UTEX Responsive issues and positions to NIM 6-1. (a) UTEX's tried to propose terms that would segregate traffic by type and bill by trunk group so "originating" and "terminating" records would	(a) Yes. Consistent with the decision in Docket No. 21982 and 28821, the Commission found that, where technically feasible, the terminating carrier's records should be used to bill originating carriers for reciprocal compensation,	*The Arbitrators decline to adopt UTEX's proposed language in §§ 7.0-7.2.1 and 7.2.3-7.4 for the reasons stated below. The Arbitrators have addressed UTEX's proposed language in § 7.5 under DPL issue AT&T NIM 6-5 above.*

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Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
	Section 251(b)(5) Traffic Optional EAS, ISP-Bound and IntraLATA Toll Traffic? (b) How should this interconnection agreement address billing arrangements for Section 251(b)(5) Traffic ISP-Bound Traffic and IntraLATA Toll Traffic? (c) For a Facility Based CLEC that is not technically capable of billing the originating carrier through the use of terminating records, what should AT&T Texas offer such CLEC to aid them in billing the originating carrier? (d) What type of records will		be irrelevant. Thie 2005 terms predated the Commission's completion of its move to terminating records. UTEX would not object to using terminating records to bill for § 251(b)(5) traffic so long as it applies to ALL § 251(b)(5) traffic and AT&T is ordered to quick blocking calls addressed to UTEX, which would allow UTEX to begin terminating more traffic, recording it and billing AT&T the $0.0007 rate. (b) The FCC's *Core Mandamus* brought Internet-related traffic within 251(b)(5). Since AT&T has invoked the *ISP Remand* regime and since UTEX has chosen to accept the offer AT&T must make to exchange all "non-access" traffic at $0.0007 there is no need to segregate. (c), (d) See UTEX's Position Statement for NIM 6-7 (e) If records are lost, then the other party should provide any records it has. If none exist at all, then historical representative information should be used. *In Exhibit 3 – Compensation Terms for Mutual Exchange of SS7 Traffic, where UTEX has proposed language addressing intercarrier compensation for various types of traffic, UTEX proposes the following language, which does not appear in Attachment 6: NIM Intercarrier Compensation.* *7.2.2 Where technically feasible, the terminating carrier's records shall be used to bill originating carriers (excluding transiting carriers), unless both the originating and terminating*	unless both the originating and terminating carriers agree to use originating records. (b) UTEX proposes to use a factoring process to determine what percentage of traffic should be billed as intraLATA toll and what percentage should be billed as reciprocal compensation. AT&T, on the other hand, proposes to use actual terminating recordings so that the parties can accurately bill each other based on actual traffic exchanged. Use of factors in lieu of actual measurements to create a bill is commercially unreasonable and results in inaccurate billing. (c) To aid a Facility Based CLEC that is not capable of billing through its terminating records, AT&T offers to provide the CLEC with Category 92-99-XX summary records on the traffic originating from AT&T's customers. (d) To identify traffic that originates from a third party telecommunications carrier to which AT&T provides end office switching on a wholesale basis, AT&T will provide the terminating Category 11-01-XX records by means of the Daily Usage File (DUF) when the carrier uses terminating recordings to bill Intercarrier compensation. Such records will contain the Operating Company Number (OCN) of the responsible LEC that originated the calls, which CLEC may use to bill such originating carrier for MOUS terminated on CLEC's network. (e) In the event of a loss of data, AT&T recommends that the Parties cooperate to	*(a) and (b) The Arbitrators note that the Commission in Docket No. 28821 reaffirmed its previous determination in Docket No. 21982 under Intercarrier Compensation DPL Issue SBC-17 that the use of terminating records is a more efficient and less burdensome method to track and bill the exchange of traffic. (Docket No. 28821, Arbitration Award – Track 1 Issues , Intercarrier Compensation – JT DPL – Final , DPL Issue SBC-17 at page 24 of 84 (February 22, 2005)). The Commission found that, where technically feasible, the terminating carrier's records should be used to bill originating carriers for Section 251(b)(5) Traffic, Optional EAS, ISP-Bound, IntraLATA Toll Traffic, and Transit Traffic, unless both the originating and terminating carriers agree to use originating records. Given that there is no evidence that the use of terminating records by the parties is infeasible, the Arbitrators conclude that the parties should use terminating records as the preferred billing method. Furthermore, UTEX's proposed language in § 7.2.3 in "Exhibit 3 – Compensation Terms for Mutual Exchange of SS7 Traffic" provides that the parties have agreed to use terminating records unless they mutually agree to some other method of billing. The Arbitrators adopt AT&T Texas's proposed language in §§ 7.0, 7.1, and 7.2.3 with a modification. All references to "§ 251(b)(5) traffic" should be replaced with "local traffic," for reasons described under DPL issue AT&T NIM 6-1. In order to address the billing of ISP-Bound traffic, the Arbitrators modify UTEX's proposed § 7.2.2 as follows to*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
	AT&T offer terminating carriers to identify traffic that originates from a third party telecommunications carrier to which AT&T provides end office switching on a wholesale basis? (e) What terms and conditions should govern the loss of call records?		*carriers agree to use originating records. Where a terminating carrier is not technically capable of billing the originating carrier (excluding transiting carriers) through the use of terminating records, the terminating carrier shall use any method agreed upon between the parties.* *7.2.3 SBC Texas and UTEX agree to use terminating recordings when rendering bills for the transport and termination of Local traffic to the originating carrier, unless SBC Texas and UTEX mutually agree to some other method of billing.*	reconstruct the lost data within 60 days. AT&T maintains Access Usage Record (AUR) files for only 90 days. 60 days will provide adequate time for AT&T to mechanically reconstruct the data. If the Parties are unable to reconstruct the data, then a reasonable estimate of the lost data should be based upon no more than three (3) to twelve (12) consecutive months of prior usage data.	*make it consistent with the language approved in Docket No. 28821 for the CJP ICA.* *"~~Each Party will transmit the summarized originating minutes of use from Section 7.2.1 above to the transiting and/or terminating Party for subsequent monthly intercompany settlement billing.~~ For Option 3, ISP-Bound Traffic shall be calculated using the 3:1 Presumption as outlined in Section 1.8.2 ~~Sections 1.6.2 and 1.7.2~~ above."* *The Arbitrators find that while the FCC's Core Mandamus Order may have brought certain types of traffic such as Optional EAS within the framework of FTA § 251(b)(5), the compensation for Optional EAS traffic does not need to mirror the rates for local traffic for the reasons delineated in DPL Issue AT&T NIM 6-12 above. Therefore, the Arbitrators conclude that there remains a need to use terminating records to track and bill the exchange of Local Traffic, Optional EAS, ISP-Bound Traffic, and IntraLATA Toll Traffic.* *(c) The Arbitrators find that where a facility based CLEC is not capable of billing through its terminating records, it is reasonable for AT&T Texas to provide originating records on the traffic originating from AT&T Texas's customers. UTEX has not stated any specific objection to AT&T Texas's proposed language. The Arbitrators, therefore, adopt AT&T Texas's proposed language for § 7.2.* *(d) This issue and the associated contract*

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					language is addressed under DPL issue AT&T NIM 6-7. The Arbitrators, therefore, decline to adopt § 7.2.1. *(e) The Arbitrators find the terms and conditions governing the loss of call records proposed by AT&T Texas to be reasonable because they require the parties to cooperate to reconstruct the data to the extent possible and then rely on historical data if the parties cannot reconstruct the data. The Arbitrators note that UTEX does not object to relying on historical representative information if call records are lost. The Arbitrators adopt AT&T Texas's proposed language in § 7.2.4, which is the same as the language approved in Docket No. 28821 for the CLEC Coalition ICA.*
AT&T NIM 6 - 15	(a) Does the ESP exemption apply to intercarrier compensation? (b) What Intercarrier Compensation arrangements should apply to IP Enabled Services Traffic? UTEX: c) What are the signaling, routing, trunking and rating obligations of the parties and is it	NIM-6 : Sections 1.4.1, 10.0 – 10.2	Finally, after many pages and innumerable "phantom" and repetitive issues, we get to the heart of the case, which AT&T predictably relegates to two issues, one of which is inane at best. See UTEX Issues 1-46 and UTEX Responsive issues and positions to NIM 6-1. UTEX proposes detailed call flow diagrams and requests that the curent state of the law and the parties specific rights be reflected in such detailed diagram that are a part of the contract. This includes resolving all Intercarrier Compensation issues. UTEX incorporates the call flow diagrams into this answer as an attached appendix to the DPL. UTEX's terms comprehensively address trunking, in various textual sections and in the call flow diagrams. The Call Flow diagrams are intended to represent the "universe" of possible	(a) No. The ESP exemption does not apply to intercarrier compensation. (b) The compensation for IP Enabled Service Traffic should be the same as any traffic that originates and/or terminates over a Party's circuit switch c) AT&T has responded to this issue in numerous issues throughout the DPL. While call flow diagrams may be interesting or helpful in some cases, written terms and conditions are legally necessary to establish any and all contract terms. Furthermore, UTEX's diagrams are unclear.	*(a) The intercarrier compensation and trunking for ESP traffic are addressed in the text of the Award in the section titled "Intercarrier Compensation for Traffic Involving UTEX's ESP Customers." Consistent with that discussion, the Arbitrators decline to adopt the proposed language by either party in §§ 1.4.1 and 10.0-10.2 or the intercarrier compensation provisions for ESP traffic in "Exhibit 3– Compensation Terms for Mutual Exchange of SS7 Traffic."* *(b) The Arbitrators note that the parties have not defined the term "IP Enabled Services" nor proposed compensation for IP Enabled Services Traffic in Attachment 6. The Arbitrators have addressed compensation for the types of traffic subject to this ICA elsewhere and conclude that separate terms for IP Enabled Services do not*

Issue #	Issue Statement	Attachment & Sections	UTEX Position	AT&T Texas Position	Arbitrators' Decision
	appropriate to include them as part of interconnection terms.		calls between the parties While we understand AT&T opposes much of our language, we are still unsure of exactly the intent of the AT&T proposed contractual terms. To the extent AT&T terms are the same or are similar to our proposed terms we currently have an understanding that AT&T intends an opposite outcome as our intended outcome notwithstanding that the words may be the same or similar. Inclusion of call flow diagrams into the contract will ensure each party's "intent" (and, more importantly the intent of the Arbitrator) is clear and explicit. This is will finally provide some measure of business certainty, which was addressed in the Second Amended Petition. Even if UTEX's proposed classifications for calls are rejected in favor of AT&T's call classifications, we still request that conforming Call Flow Diagrams be devised, so that UTEX will know what to do and how to do it, and UTEX will know when something will or will not result in a bill from AT&T and the amount of the bill. To date AT&T has refused to take part in the creation or use of call flow diagrams although many of their extra-contractual references (such as MECAB, MECOD, and ATIS) have explicit call flow diagrams and call flow diagrams are often used in this industry to show parties' intent. AT&T will not engage because the last thing it wants is certainty or clarity because that will prevent it from turning around and attacking what it says it wants today but later decides it opposes.		*need to be included.* *(c) The issue of whether call flow diagrams should be incorporated into the ICA is addressed under DPL issues UTEX 31 and UTEX 33.*

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			In Exhibit 3 – Compensation Terms for Mutual Exchange of SS7 Traffic, where UTEX has proposed language addressing intercarrier compensation for various types of traffic, UTEX has proposed language in § 1.4.1 that would not apply compensation to local and ESP traffic unless and until an Out of Balance Threshold is met and in § 3.3 when the Out of Balance Threshold is met, the rate for the termination of Local and ESP Traffic is $0.0007 per minute of use.		
AT&T NIM 6 - 16	Is it appropriate to include a specific change in law provision to address the FCC's NPRM on Intercarrier Compensation?	NIM-6: Sections 11.0 – 11.1	See UTEX Issues 1-46 and UTEX Responsive issues and positions to NIM 6-1. There is no purpose in having a laundry list of favorite cases. If it is change of law, then the change of law terms will apply. But if AT&T wants to start mentioning specific proceedings then UTEX does too. The Broadband Plan, including the FCC's current consideration of CBeyond's request for access to ILEC facilities that are currently not available almost immediately come to mind, but there are probably many more.	Yes. It is appropriate to include a unique change in law provision in the Attachment Compensation to address the FCC's Order on intercarrier compensation, which will result from its Notice of Proposed Rulemaking Order, *In the Matter of Developing a Unified Intercarrier Compensation Regime*.	*The Arbitrators decline to adopt AT&T Texas's proposed language for §§ 11.0-11.1. The Arbitrators conclude that the intervening law provisions in the General Terms and Conditions are sufficient to address any changes in intercarrier compensation resulting from FCC Orders.*
AT&T ITR - 1	Should the Parties' ICA contain terms and conditions regarding interconnection trunking requirements?	AT&T ITR Attachment UTEX Attachment NIM and associated Appendices, including SS7-SPOI	UTEX has terms for trunking. *UTEX has extensively addressed the signaling, routing and rating of the traffic in issue above, and will not repeat it here.* *UTEX proposes detailed call flow diagrams and requests that the current state of the law and the parties specific rights be reflected in such detailed diagram that are a part of the contract. This includes resolving all Intercarrier Compensation issues. These diagrams, comprehensively address these topics. The Call Flow diagrams are intended*	Yes. The ICA needs terms and conditions for routing traffic exchanged between the parties. Different types of traffic require specific trunking arrangements. Without language addressing this issue, the Parties will be unable to properly route traffic. *AT&T withdrew its proposed revisions in Section 12.1 and 12.2.* *The ITR's primary function is to provide a clear and concise detailed description of the specific trunking requirements for the routing*	*The Arbitrators find AT&T Texas's argument in favor of a single attachment delineating the routing of traffic to be persuasive and reasonable, and with the exception of any specific issues elsewhere in which it has not been adopted or has been modified by the Arbitrators, adopt AT&T Texas's ITR Attachment, as modified below:* *For reasons described under DPL Issue AT&T NIM 2-4, the Arbitrators replace the language in §2.14 with the following language:* *2.14 "'Section*

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			to represent the "universe" of possible calls between the parties Even if UTEX's proposed classifications for calls are rejected in favor of AT&T's call classifications, UTEX still requests that conforming Call Flow Diagrams be devised, so that UTEX will know what to do and how to do it, and UTEX will know when something will or will not result in a bill from AT&T and the amount of the bill. AT&T will not engage because the last thing it wants is certainty or clarity because that will prevent it from turning around and attacking what it says it wants today but later decides it opposes. UTEX Initial Br. at 256.	*of different traffic types, including trunk group configurations, ancillary services, trunk design blocking criteria, and servicing responsibilities for trunking necessary for the exchange of telecommunications traffic between UTEX and AT&T Texas. AT&T Texas Ex. 1, Direct Testimony of Joe P. Boyd ("Boyd Direct"), at 28:2-6.* *The Commission should adopt the ITR language as proposed by AT&T Texas because it clearly and concisely establishes the parties' responsibilities for trunking requirements, avoiding potential future ICA language disputes. AT&T Texas Ex. 1, Boyd Direct, at 28:9-12.* *.* *UTEX has not proposed a specific ITR appendix. Instead, UTEX has chosen to attempt to address trunking requirements throughout various disparate appendices. However, instead of providing clarity, UTEX's attempt creates confusion and ambiguity with respect to specific trunking requirements, including trunk group configurations, ancillary services, trunk design blocking criteria, and servicing responsibilities for trunking necessary for the exchange of telecommunications traffic between UTEX and AT&T Texas, solely for the benefit of UTEX. Once more, AT&T Texas has additional concerns with this confusing and ambiguous language because UTEX has also included, in the proposed ICA, terms that would allow UTEX to*	*251(b)(5)/IntraLATA Toll Traffic' shall mean, for purposes of this Attachment, (i) Local Traffic, (ii) ISP-Bound Traffic, (iii) Optional EAS traffic, (iv) FX traffic, (iv) Transit Traffic, (v) IntraLATA Toll Traffic originating from an end user obtaining local dialtone from CLEC where CLEC is both the Local Traffic and intraLATA toll provider, and/or (vi) IntraLATA Toll Traffic originating from an end user obtaining local dialtone from AT&T Texas where AT&T Texas is both the Local Traffic and intraLATA toll provider."* 12.1 DELETED 12.2 DELETED

The parties provided the text in normal font in the joint DPL matrix filed on March 29, 2010. The Arbitrators have added the text in italics.

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				unilaterally interpret and choose which language would apply to trunking requirements. Hundreds of CLECs that are interconnected with AT&T Texas have an Appendix ITR in their ICAs. AT&T Texas Ex. 1, Boyd Direct, at 28:14-29:20.	
AT&T PM-1	Is AT&T's offer of Performance Measures as approved by the PUC for the successor T2A appropriate for inclusion in UTEX's Interconnection Agreement?	CC Performance Measurments Attachments		Yes. The PUC directed the parties to the T2A successor docket to discuss an alternative to the T2A performance measures plan and to attempt to reduce the number of measures. The parties returned to the PUC with only four disputed issues, which the PUC resolved. The resulting performance measures plan was included in all replacement T2A agreements.	*This issue is addressed in the text of the Award in the section titled "Performance Measures and Liquidated Damages."*
AT&T PM-2	Should the PUC order liquidated damages beyond the Stand Alone Commercial Remedy Plan that is associated with the PMs found in the Agreement and that AT&T is willing to make available to UTEX?	CC Performance Measurments Attachments		No. §§ 251(b) and (c) of the FTA do not require ILECs to pay liquidated damages in the form of performance remedies. The PMs adequately address AT&T's performance requirements. The Stand Alone Commercial Remedy Plan negotiated with the CLECs in Docket 28821 provides appropriate compensation for failure to meet those PMs. AT&T is willing to make that Remedy Plan available to UTEX. A separate liquidated damages provision for UTEX is unreasonable and unjustified.	*This issue is addressed in the text of the Award in the section titled "Performance Measures and Liquidated Damages."*